

**TIPPING THE SCALES OF JUSTICE:
THE ROLE OF ORGANIZED CITIZEN ACTION IN
STRENGTHENING THE RULE OF LAW**

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**TIPPING THE SCALES OF JUSTICE:
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Most countries are not able to hold guilty parties responsible for violating people's most fundamental right – the right to life – most of the time. Some cases of violations, however, do progress through the justice system, and have perpetrators, including state officials, sentenced. Why do some cases progress while others do not? And what can this question teach us about how justice is achieved and the rule of law strengthened?

I argue that organized citizen action - protests, media campaigns, meetings with state investigators, collaboration with international allies, and national and international litigation and advocacy – is the key to understanding why some cases progress within judicial systems that otherwise guarantee virtual impunity. Using a multi-methods, multi-level research design, I present evidence from Mexico and Colombia that organized citizens can play a decisive role in the judicial treatment of grave crimes, specifically enforced disappearance and murder. I show that cases in which victims of violence and their advocates both mobilize and negotiate directly with state investigators yield significantly better judicial outcomes than similar cases in which there is no organized citizen action. I find that two types of citizen action are key to breaking patterns of impunity, or freedom from punishment. First, *activists* must apply focused political

pressure targeting impunity. Second, *advocates* must bridge the gap of trust between the state and victim.

Scholars and policymakers concerned with improving judicial outcomes and the rule of law largely focus on investing in institutional strength, professionalizing the legal bureaucracy, and legal reform. In contrast, I hone in on how judicial actors respond to mobilization outside of formal political institutions. I argue that these officials respond to political pressure exerted by domestic and international actors, and can be incentivized to form collaborative relationships with victims of violence and their advocates. When judicial officials are embedded in victim advocacy networks, legal outcomes improve. By focusing on the micro-processes of investigations and the relationships and dynamics between organized citizens and the state, I bring activists and advocates into the picture as agenda setters and motivators for justice and stronger rule of law.

BIOGRAPHICAL SKETCH

Janice Kreinick Gallagher was raised in Albany, NY. In 1999 she earned her Bachelors of Arts with High Honors from Swarthmore College, where she majored in Political Science and a minored in Economics. She went on to receive a Masters of Arts in Teaching, with a focus in History and Social Studies, from Brown University in 2003. After working as a high school Spanish and History teacher from 2003 – 2006, and with a non-governmental organization in Colombia during 2006 and 2007, she was admitted to the Ph.D. program in the Department of Government at Cornell University. She obtained her Master of Arts in Government in 2011, and successfully defended her Ph.D. dissertation in 2015. She is currently a Postdoctoral Fellow at the Watson Institute for International Studies at Brown University.

Tipping the Scales of Justice

To my father, Jay Gallagher

Who taught me joyous, rigorous irreverence

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At Cornell, I was lucky to have three dissertation committee members who patiently and attentively guided me through the entire doctoral process. They quickly gave me in-depth, sharp feedback on everything I wrote- an immeasurably important contribution to this dissertation. Matt Evangelista helped me brainstorm ideas and differentiate which ones might be worth pursuing. Ken Roberts gave pitch perfect advice on how to frame my ideas and contributions. And Sidney Tarrow guided me through the process of transforming insights gained as an activist into meaningful research. He was the first to point out that an idea was not yet fully formed, but also the first to recognize when I was onto something. He taught me to find my voice, to make it heard, and provided me with much needed direction.

For solving all the logistical and administrative challenges of conducting this fieldwork, I relied on a team of exceptional administrators at Cornell. Laurie Coon, Stacy Kesselring, Tina Slater, and Judy Virgilio consistently went above and beyond to make it work, and helped me resolve last minute obstacles more times than I can count. Christiana Kasner's knowledge, competence and flexibility at the Inter-American Foundation was a game-maker for this project.

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I am not a lawyer, though this project is largely about the law. I am infinitely grateful to many lawyers in both Mexico and Colombia who generously and selflessly took the time to help me make sense of the legal world: César Octavio Paz, Esteban Hoyos, Francisco Romero, Rodolfo Salazar, Ana Luna Serrano, and Ana Claudia Martinez all tirelessly attended to my endless questions. Camilo Castillo and Ethel Nataly Castellanos traversed the Col-DF-Ithaca triangle with me, and their comparative legal work in Mexico and Colombia has laid the groundwork for this project.

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I may not have undertaken the PhD without Gabi Kruks-Wisner, who has provided professional wisdom, unending patience and kindness, and even jumped off a rickshaw to console me in an emergency. Cathy Wirth coordinated my sister's wedding, was my traveling and silent meditation partner, and accompanied my family on the most important trip of our lives. Their insight and friendship carries me.

My mother, Emily Gallagher, has tirelessly sought to support me and understand my work, and I couldn't imagine a more enthusiastic cheerleader. My Aunt Judi learned Spanish and together we have shared our joy in learning about Mexico. My sister, Ellen Gallagher, her wife Allyson Goose, and my unfathomably precious nephew Jasper Simon Gallagher Goose have provided unwavering positivity, understanding and a second home during the final semester of my writing. I am so grateful for their support.

My father passed away just as I was about to begin my fieldwork for this project. A lifelong New York State political reporter who gave me an internship filing information requests and interviewing politicians at age 15, his influence is evident in every page of this dissertation. He saw the promises and possibilities of "googoo's," good government advocates, and taught me to think about the importance of small victories and governmental accountability to average citizens. I have imagined many conversations with him throughout this process, and continue to draw from his wisdom. This dissertation is dedicated to him.

TABLE OF CONTENTS

BIOGRAPHICAL SKETCH.....	iv
ACKNOWLEDGMENTS.....	vi
LIST OF FIGURES.....	x
1. INTRODUCTION: ORGANIZED CITIZEN ACTION AND THE RULE OF LAW.....	1
2. DATA AND METHODOLOGY: HUMAN RIGHTS, JUDICIAL OUTCOMES, AND ORGANIZED CITIZEN ACTION	45
3. A TALE OF TWO MEXICOS: STATE VIOLENCE AND ORGANIZED CITIZEN ACTION.....	65
4. FIGHTING WITH THE OCEAN: CIVIL SOCIETY DYNAMICS AND..... THE PROVISION OF JUSTICE IN NORTHERN MEXICO	106
5. COLOMBIA: THE IMPOSSIBILITY OF CIVIL SOCIETY AS “ADVOCATES” IN THE CONTEXT OF WAR	153
6. THE POLITICS OF DISRUPTING JUDICIAL INERTIA: HOW THE COLOMBIAN..... STATE BEGAN TO PUNISH ITS OWN	177
7. CONCLUSION: TOWARDS A PARTICIPATORY UNDERSTANDING..... OF THE RULE OF LAW	208
APPENDICES:	
A: METHODOLOGY: OBTAINING AND INTERPRETING JUDICIAL OUTCOMES DATA IN..... MEXICO AND COLOMBIA	260
B: METHODOLOGY: INNOVATION, ETHICS, SAFETY AND ACCESS.....	285
C. ADDITIONAL COLOMBIA DATA.....	291
Works Cited.....	300

List of Figures

FIGURE 1.1 BOOMERANG MODEL.....9
FIGURE 1.2 THE JUDICIAL BREAKTHROUGH MODEL10
FIGURE 1.3 SUMMARY OF RESEARCH DESIGN: TESTING HYPOTHESIS 1 13
FIGURE 1.4 JUDICIAL SUCCESS RATES IN MEXICO 15
FIGURE 1.5 JUDICIAL SUCCESS RATES IN COLOMBIA 17
FIGURE 1.6 ACTIVISTS AND ADVOCATES 20
FIGURE 1.7 ADVOCATES, ACTIVISTS, AND THE PROVISION OF JUSTICE21
FIGURE 1.8 SUMMARY OF RESEARCH DESIGN: TESTING HYPOTHESIS 1 22
FIGURE 1.9 CONSTITUTING ACTIVISTS AND ADVOCATES: BELIEFS AND ACCESS.....24

FIGURE 2.1 SUMMARY OF RESEARCH DESIGN 45
FIGURE 2.2 AMERICASBAROMETER 2010 SURVEY DATA OF MEX VS. COL JUSTICE SYSTEMS..52
FIGURE 2.3 MOST-DIFFERENT ANALYSIS WITH TWO CASES55
FIGURE 2.4 MOST SIMILAR ANALYSES: HYPOTHESIS-GENERATING AND.....57
HYPOTHESIS-TESTING

FIGURE 4.1 JUDICIAL OUTCOMES: MEXICO HOMICIDES.....140
FIGURE 4.2 JUDICIAL OUTCOMES: MEXICO DISAPPEARANCES.....141
FIGURE 4.3: RELATIVE PROVISION OF JUSTICE BY ORGANIZATION.....143
FIGURE 4.4 ACTIVISTS, ADVOCATES, AND THE PROVISION OF JUSTICE.....143

FIGURE 6.1 IMPROVEMENT IN JUDICIAL STATUS OF EXTRAJUDICIAL EXECUTIONS.....179
2009-2013
FIGURE 6.2 TOTAL NUMBER OF CASES OF EXTRAJUDICIAL EXECUTIONS.....187
FIGURE 6.3 GOVERNMENT DECISIONS RELATED TO EXTRAJUDICIAL EXECUTIONS.....191
2003– 2010
FIGURE 6.4 WHO DOCUMENTED CASES UNHCHR PRESENTED TO.....193
COLOMBIAN GOVERNMENT
FIGURE 6.5 NATIONAL NEWSPAPERS COVERAGE OF EXTRAJUDICIAL EXECUTIONS196
2003–2010
FIGURE 6.6 ANNUAL FIGURES: EJES.202
FIGURE 6.7 PERFORMANCE OF DEPARTMENT-BASED INVESTIGATORS VS.204
NATIONAL HUMAN RIGHTS UNIT
FIGURE 6.8 INTERNATIONAL HUMAN RIGHTS REPORTING ON.....205
EXTRAJUDICIAL KILLINGS 2002 – 2011

FIGURE 7.1 SUMMARY OF HYPOTHESES AND FINDINGS.....	210
FIGURE 7.2 NEW SYSTEM CASES IN CHIHUAHUA.....	216
FIGURE 7.3 HOMICIDE INDICTMENTS IN CHIHUAHUA COURTS.....	217
OLD VS. NEW SYSTEM	
FIGURE 7.4 JUDICIAL RESULTS OF EXTRAJUDICIAL KILLINGS IN COLOMBIAN COURTS	218
OLD VS. NEW SYSTEM	
FIGURE 7.5 US FOREIGN ASSISTANCE TO COLOMBIA AND MEXICO, 2008-2012.....	223
FIGURE 7.6 WHO CHOOSES TO NOTIFY NGOs/SOCIAL LEADERS IF THEIR LIFE IS AT RISK?....	229
FIGURE 7.7 DEMOGRAPHICS OF NGO PARTICIPANTS VS. NON-PARTICIPANTS.....	231
FIGURE 7.8 SUPPLY CHAIN OF JUSTICE: COLOMBIA.....	235
FIGURE 7.9 SUPPLY CHAIN OF JUSTICE: MEXICO.....	236
FIGURE 7.10 TOTAL REPORTED CRIMES PER 100,000 INHABITANTS 1997-2010.....	254
FIGURE 7.11 TOTAL MURDERS PER YEAR, 2007-2010.....	254
FIGURE 7.12 REASONS WHY CRIMES ARE NOT REPORTED IN MEXICO.....	256
FIGURE C.1 UNIVERSE OF EXTRAJUDICIAL EXECUTIONS CASES.....	292
FIGURE C.2 JUDICIAL STATUS OF CASES OF VIOLATIONS TO PHYSICAL INTEGRITY.....	294
FIGURE C.3: CASES IN THE ORAL AND WRITTEN SYSTEM IN THE.....	295
STATE-BASED COURTS AND NATIONAL HUMAN RIGHTS UNIT	
FIGURE C.4: PROGRESS OF CASES IN NATIONAL HUMAN RIGHTS UNIT 2013 VS. 2009.....	296
FIGURE C.5 MAP OF EXTRAJUDICIAL EXECUTIONS BY MUNICIPALITY, 2000-2010.....	297
FIGURE C.6: CATEGORIZATION OF JUDICIAL STAGES, IN SPANISH.....	298

Chapter One¹

Introduction: The Role of Organized Citizen Action in Strengthening the Rule of Law

.....

Fixing broken governmental institutions has been and continues to be one of the primary preoccupations of political scientists. While copious ink has been spilled over what to do about over-reaching presidents and under-performing legislatures, as a discipline we have thought comparatively little about how and why judiciaries function well.

When we have thought about judiciaries, we mostly think inside the box, in narrow institutional terms: how might we tweak certain legislation, legal systems, and professional training for judicial bureaucrats? We have rarely thought about how citizens and civil society are part of the picture of judicial performance.

Several important works buck this trend, however. First, the literature on transnational advocacy networks, pioneered by Keck and Sikkink, 1998, tells us that changes in state human rights behavior often come from local and international NGOs pressuring the government. But this literature does not hone in on judiciaries, leaving the processes and mechanisms of local judges doing the daily work of confronting grave crimes and human rights violations unexplored and under specified. In short, it does not fully explain patterns of change within judicial institutions in response to societal pressures to uphold the role of law. Second, Dan Brinks takes up the question of what drives judicial

¹ This dissertation draws on field research carried out in Mexico and Colombia between 2010 and 2013. This fieldwork was possible due to the generous support of the Social Science Research Council, the Fulbright Garcia-Robles program, the Inter-American Foundation, the Einaudi Center for International Studies at Cornell University, and The Law and Social Sciences Program of the National Science Foundation under Grant Number 1122333. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author and do not necessarily reflect the views of the National Science Foundation or any other funding organization, University, or The Law and Social Sciences Program of the National Science.

responses to police killings in Latin America in his 2006 book. His findings show that the *financial* resources of homicide victims explain variation in judicial success.

This study finds that the *political* resources of victims and their advocates are also important for breaking patterns of impunity. What matters for changing judicial performance is civil society honing in on decision-makers within judicial bureaucracies, and incentivizing them to make different decisions. These incentives are both hard and soft. The hard incentives come from vocal critics of the judicial system demanding outcomes and credibly imposing a political cost to continuing impunity. The soft incentives come from victim advocates who form good-faith relationships with investigators, leading them towards better evidence and investigatory practices, and facilitating changes in their thinking about who victims of violent crime are, how they should be treated in the justice system, and what evidence these victims might provide to investigators.

These findings tell us that fixing broken judicial systems cannot and should be limited to institutional approaches, but rather should centrally consider how citizen participation and involvement with investigations and accountability is constitutive of judicial improvement.

.....

I. Introduction: Tipping the Scales of Justice

Most countries are not able to hold guilty parties responsible for violating people's most fundamental right – the right to life – most of the time.² In both Mexico and Colombia, rates of impunity, or the failure to hold perpetrators legally responsible for the

² According to the UN Office of Drug and Crime, for every 100 victims of homicide globally, there are 43 persons convicted of homicide. In the Americas, which has the lowest conviction rate for any region in which data is available, there are only 24 people convicted for every 100 homicides. https://www.unodc.org/documents/gsh/pdfs/Chapter_5.pdf, pgs 93 - 94.

commission of a crime, are worse than in the rest of the world. Statistics are even more dire for solving violent crimes, and worse still when the state is implicated as a guilty party.³ Investigating murders and disappearances can often be dangerous for state officials, especially in cases where one of their own is implicated in the commission of the crime. Add bureaucratic inertia, resource constraints, and institutional turf battles into the mix, and the result is that the vast majority of cases of homicides and disappearances remain in impunity – that is, no one is held legally responsible for the commission of these heinous crimes.

Given these circumstances, it would appear a foregone conclusion that the following case would remain unsolved:

A young man named Fair Leonardo Porras Bernal left his home in Soacha, a poor city located just south of Bogotá, Colombia on January 8th, 2008 to look for work. Leonardo, 26, was developmentally disabled and had a mental age of about nine. Despite his family’s exhaustive efforts to find him, his whereabouts would remain unknown for six months.

Leonardo’s corpse was finally located 400 miles from Bogotá, near the Venezuelan border. He was buried in a mass grave, and forensic analysis showed that he had been shot multiple times. His corpse was then stuffed in a plastic bag and labeled “N.N.”, indicating an unidentified body, by state investigators. The puzzling thing was that his death had been ruled a “legitimate kill” by the Colombian military – the doctor who delivered Leonardo’s body to his family told his mother that military records indicated that her son had been a narco-terrorist

³ In Colombia, for example, of more than 48,000 reports of enforced disappearances between 1998 and 2010, there were fewer than 50 people sentenced for the commission of the crime. (based on original analysis based on response to Information request to *Fiscalía General de la Nación*, Colombia). In Mexico, though the judicial status is unknown in the more than 20,000 estimated cases of disappearances between 2006 and 2012, in Chihuahua, Mexico’s most violent state during this time period, there were more than 2,500 reported cases of enforced disappearances with approximately 20 perpetrators found guilty.

commander, and that he had been killed during a gun battle with the military on January 12th, 2008 – just three days after he was last seen in Soacha. The report noted that he had been dressed in a guerrilla uniform at the time of his death, and that he had been holding a gun in his *right hand*. His mother responded:

Tell me, doctor, how could my son who disappeared from Soacha on January 8th, who was declared 53% handicapped...who only used his left arm because of disabilities in the right, became the head of a narco-terrorist organization 400 miles away in a matter of three days? This is an insult, and I cannot accept it.⁴

Against all odds, state officials involved in Leonardo’s murder were held criminally accountable by the Colombian justice system: five soldiers and their commanding officer were sentenced to 52 to 54 years in prison each, received hefty fines, and were found guilty of the crimes of enforced disappearance and crimes against humanity. But why did his case move forward in the justice system while so many others languished? There had been numerous clearly documented cases of members of the Colombian military killing civilians before, but punishment was nearly unheard of.⁵ What had been different about the prosecution and investigation of Leonardo’s case?

In this dissertation I argue that we must look beyond formal institutional explanations to the informal relationships between citizens and the state in order to understand why some cases achieve judicial success⁶ while so many others do not. The results in Leonardo’s

⁴ Facts of this case are assembled from personal interviews with Leonardo’s mother, Luz Marina Bernal, in July 2013, along with publicly available media interviews. The above quote is taken from the article “In Colombia the price of a life is \$770,” by Stig Arild Pettersen, available at <http://thanassiscambanis.com/sipa/?p=90>. A detailed chronicle of the sentencing of the soldiers is available (in Spanish) at: <http://periodismohumano.com/en-conflicto/cronica-de-una-sentencia-historica-los-falsos-positivos-de-soacha-son-crimenes-de-lesa-humanidad.html>.

⁵ For example, the 1994 Trujillo massacre, in which members of the Colombian military were witnessed torturing and dismembering civilians.

⁶ I define “judicial success,” as an ordinal measure of how far within the justice system a case progressed – the further a case progressed from the initial reporting of the crime, the more successful I consider the

case don't make sense unless we understand the networks of domestic and international non-governmental and intergovernmental organizations that spent more than a decade documenting and exposing the issue of extrajudicial killings, building relationships with investigators and bureaucrats inside the Colombian state along the way. This dense network of lawyers, activists and advocates had documented the phenomenon of "job recruiters" kidnapping young men and delivering them to the military, who would then murder them and claim them as battle kills, long before Leonardo ever left his home on that fateful January morning. This civil society-led network had successfully incorporated allies from within the Colombian justice system and the United Nations, and when Leonardo and 12 other young men from his neighborhood were caught up in this nefarious military practice, they were able to mobilize these allies to effectively coordinate media attention, leverage international and domestic pressure, and negotiate with state prosecutors.

My research puts at its center the informal institutions⁷ that emerge between members of state judicial bureaucracies and organized citizens and their allies. I trace the emergence of these informal networks to exogenous pressure exerted on the state by citizens critical of impunity.⁸ Using a multi-methods, multi-level research design implemented during more than two years of fieldwork in Mexico and Colombia, I find that two types of

outcome. Despite differences in the penal code across states and countries, cases in each distinct context proceed through the system in the following order: initial investigatory stage, concrete investigatory advances, indictment, trial, and sentencing.

⁷ I adopt Helmke and Levitsky's 2004 definition of informal institutions as "rules and procedures that are created, communicated and enforced outside the officially sanctioned channels" (page 1).

⁸ Impunity (*impunidad* in Spanish), defined as the freedom from punishment, is the term used by human rights advocates, victims and lawyers to refer to the failure of the state to prosecute crimes and to hold the guilty parties legally responsible for the commission of a crime.

organized citizen action are key to breaking patterns of impunity. First, *activists* that critique and confront the state must apply focused political pressure targeting impunity. This pressure produces a political cost to judicial inaction, incentivizing both elite and low-level state actors to take steps to solve the cases that are the focus of the activist attention. Second, *advocates* must bridge the gap of trust between the state and victim, facilitating the flow of investigative information between family members of victims of violence and state investigators. Under certain conditions, the relationships between advocates and state investigators embed⁹ judicial actors in new social and political networks, leading to increased social accountability – and ultimately to an improvement in the provision of justice.

II. How does Organized Citizen Action Affect the Rule of Law?

While there are few studies that explore the causal relationship at the center of this dissertation, namely how organized citizen action affects the rule of law, recent scholarship in comparative politics has explicitly argued for a society-led approach to understanding how to strengthen institutional accountability¹⁰ and the rule of law. This *social accountability* approach¹¹ emerged after scholars had widely noted the

⁹ I use Peter Evans' (1996) definition of embedded: "ties that cross the public-private divide." I also draw on Lily Tsai's work (2007), which uses a definition of embeddedness that implies more connection between public and private: "incorporating local officials as group members."

¹⁰ I employ Peruzzotti and Smulovitz's (2006) simple definition of accountability: "The ability to ensure that public officials are answerable for their behavior – forced to justify and inform the citizenry about their decisions and possibly eventually be sanctioned for them" (5). This definition draws from Schedler's (1999) two-part concept of accountability: "*answerability*, the obligation of public officials to inform about and to explain what they are doing, and *enforcement*, the capacity of accounting agencies to impose sanctions on power holders who have violated their public duties."

¹¹ Social accountability is defined by these scholars as the "non-electoral yet vertical mechanism of control of political authorities that rests on the actions of an array of citizens' associations and movements and the media" (Peruzzotti and Smulovitz, 2006, 10). This definition draws from a spatial understanding of

ineffectiveness of institutional accountability mechanisms,¹² and from their observations that new webs of social movements, NGOs and media had sprouted after the last wave of democratization in Latin America.¹³ These scholars posit that these new non-state actors constitute an “alternative mechanism for the exercise of accountability regarding governmental actions” (Peruzzotti and Smulovitz, 2006, 4), and adopt a definition of the rule of law that emphasizes constraining the excesses of the executive branch.¹⁴ While my approach is compatible with these scholars, later in this chapter I discuss a “thicker” understanding of the rule of law that emphasizes that citizen-led accountability efforts not only constrain governmental abuses, but also can play a positive, constitutive role in strengthening the rule of law (Magen, 2009).

Brinks (2008), responding explicitly to O’Donnell’s work on the rule of law (O’Donnell, 1993; 2004), focuses on a causal relationship quite similar to the one analyzed in this dissertation. Brinks asks how victims of police killings matter in determining judicial outcomes, and finds that the state’s ability to hold its own representatives accountable for extra-judicial killing is attributable to the different *financial* resources available to the litigant. Analyzing more than 500 cases of police killings in three countries, he finds that

institutional accountability (O’Donnell, 1998), where checks and balances constitute “horizontal accountability,” and elections are the core of “vertical accountability.”

¹² Przeworski, Stokes, and Manin, 1999 and Moreno 2005, for example, focus on the shortcomings of elections as a vertical accountability mechanisms, and O’Donnell, 1998; Méndez, O’Donnell and Pinheiro, 1999; and Moreno et al, 2005 highlight the failure of checks and balances as a horizontal accountability mechanism.

¹³ As crime rates and levels of violence have risen in many new Latin American democracies in the past two decades, weak rule of law and the associated weakness and inefficiency of state bureaucracies have been seen by many comparativists specializing in Latin America as a serious threat to democratic consolidation and sustainability. See: Domingo & Sieder, 2001, Centeno 2007, Mainwaring 2006, O’Donnell 1999.

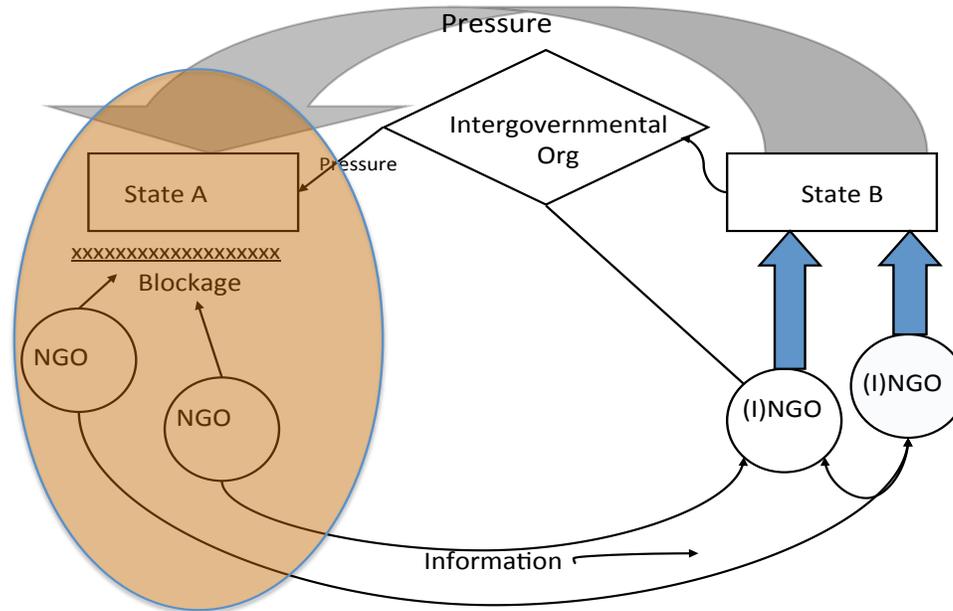
¹⁴ Latin American courts-focused literature has, in particular, focused on judges’ ability and willingness to check the executive. See Kapiszewski and Taylor, 2008 for an excellent, exhaustive review of this literature. This spate of work about judicial politics in Latin America includes: Holston and Caldeira, 1998; Hilbink, 2007; Couso, Huneeus and Sieder, 2010; Sieder, Schjolden and Angell, 2005; Staton, 2010.

local protests do not change judicial outcomes.¹⁵ My research suggest that contrary to Brinks' findings, organized citizen action significantly affects the provision of justice by conferring *political* resources on the victim and their advocates to counter-balance the advantage that police and military have in the justice system.

Human rights scholars within international relations have most directly addressed how citizens affect the provision of justice and rule of law. The Boomerang and Spiral models (Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999) continue to give us valuable understandings of how international pressure operates to change the human rights norms and practices of states. Despite different iterations of the original Boomerang model, the focus in these models has remained on how international pressure can be leveraged to promote national levels of compliance. Following Simmons' (2009), however, I find that domestic actors are the key to compliance. Further, I find that the important negotiations over impunity are happening within the country of the commission of the rights violations, or in the Boomerang's language, State A.

¹⁵ Brinks looks only at how local protests affect judicial decisions. He does not measure other forms of mobilization like international advocacy, national protests, meetings with authorities, lobbying, press campaigns, etc.

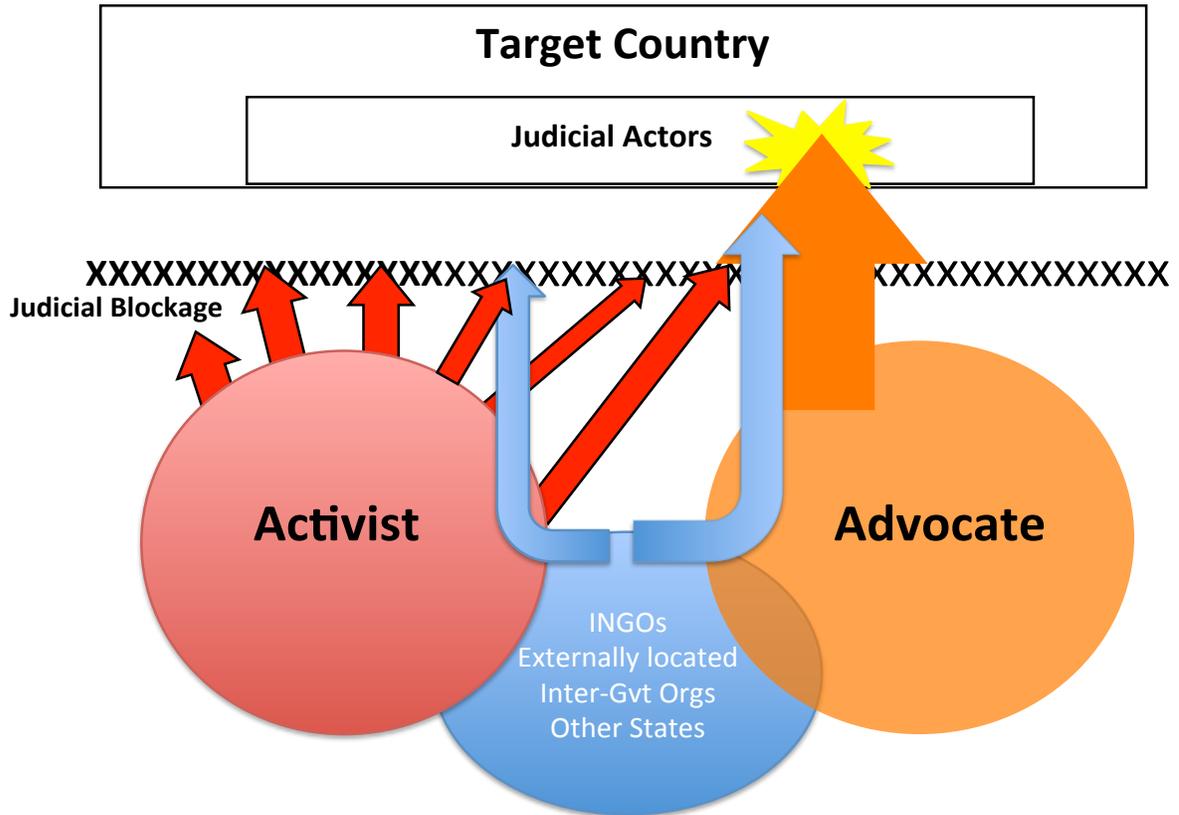
Figure 1.1 Keck & Sikkink (1998), Boomerang Model (*highlight added*)



While these constructivist international relations scholars rightly emphasize the importance of citizen action in changing the human rights behavior of states, their insights leave open the questions of why the provision of justice varies dramatically sub-nationally, and whether political pressure works differently depending on the targeted state institution. I argue that citizen pressure targeting judicial outcomes works differently than political pressure aimed at changing executive or legislative action.

In this dissertation I posit a modification to the Boomerang Model, the **Judicial Breakthrough Model**, which seeks to highlight the following four insights into the political and ideational dynamics involved in changing patterns of impunity:

Figure 1.2 The Judicial Breakthrough Model



- 1) I argue that the key site of contention, or “blockage” in the language of the boomerang, in the struggle over impunity is within the target country, at the *judicial decision-making site*. I define the judicial decision-making site as the physical location in which those with the authority to make key decisions about the investigation and prosecution of the case (ex. which personnel will be assigned to the case) reside.¹⁶
- 2) I highlight the role of both individual and groups of judicial actors – especially local and low-level members of the state judicial bureaucracy. Improving judicial

¹⁶ In Mexico, a federal system, this authority resides in the state capitals. Decisions about investigative personnel are generally taken by the governor or the State Attorney General (either the *Procurador* or *Fiscal General del Estado*). In Colombia, a unitary system, all decisions about judicial personnel are made in Bogotá, the nation’s capital, by members of National Attorney General’s Office (*Fiscalía General de la Nación*).

success entails changing a series of actions by state agents somewhat insulated from the boomerang of international political pressure: police officers, investigators, members of the office of the Attorney General and other investigative units, and judges. These state officials are often anonymous and their decisions opaque both to the public and to those who might seek to pressure them. Despite their anonymity and relatively low rank in the political hierarchy, in most countries these state officials process the vast majority of cases of violations of citizens' most serious rights - yet we know little about how or how well they work.

- 3) I divide civil society actors and their allies into advocates and activists, and specify what distinct but complementary roles these actors play. *Activists* are institutional outsiders who take a consistently and vocally critical view of the state's justice system, generating a political cost to impunity. *Advocates* have the trust of both the victims and the state, and are able to facilitate the flow of investigative information relevant to solving the crime between the two parties. I theorize that advocates are best positioned to break the judicial blockage and access judicial actors, and that this breakthrough is the key site in changing judicial behavior and improving the provision of justice. Activists, on the other hand, play an important role in chipping away at the judicial blockage, creating the political pressure necessary for advocates to be able to break through the wall of impunity.
- 4) I theorize that international NGOs, inter-governmental organizations and other states accompany the efforts of advocates and activists, in effect strengthening

their efforts to break through to access and influence judicial actors. These international groups cannot be effective advocates without a sizable and fairly permanent presence in the target country, however, since one key to the success of advocates is that they build relationships with victims, activists and the state – something virtually impossible to do without an ongoing physical presence at the judicial decision-making site.

These theoretical insights are derived from my research and findings, which I introduce below.

III. Research Question, Design and Summary of Findings

A single research question guides this project. I ask: *what explains why some cases of murders and disappearances achieve judicial success within contexts of widespread impunity?* To answer this question, I use a multi-level, multi-method research design, which draws on the logic of both nested analysis (Lieberman, 2005) and Most Similar and Different research designs (Przeworski and Teune, 1970).

A. Organized citizen action and the provision of justice

When the family member of a victim of the right to physical integrity joins a protest, participates in a march, or joins with an NGO to pressure government officials to investigate the case of the murder or disappearance of their loved one, how does it affect the possibility that their case will move forward in the justice system? I hypothesize that organized citizen action will increase the likelihood that a case of homicide or

disappearance will achieve some judicial success.

Figure 1.3 Summary of Research Design: Testing Hypothesis 1

Hypothesis	Research Design	Level/Units of Analysis	Outcome to be explained	Data & Evidence
H1: Organized citizen action makes the provision of justice more likely.	<p>Most Different Systems Design:</p> <p><i>Differences in federal/unitary system; ongoing civil war; strength/age of democracy; role of state in violence</i></p>	<p>National: Colombia;</p> <p>Sub-National: Mexico (2 northern states)</p>	<p>Common: Selective Judicial Success</p>	<p>Large-<i>n</i> descriptive Statistics: Judicial and Advocacy Databases.</p> <p>Interviews, Ethnography</p>

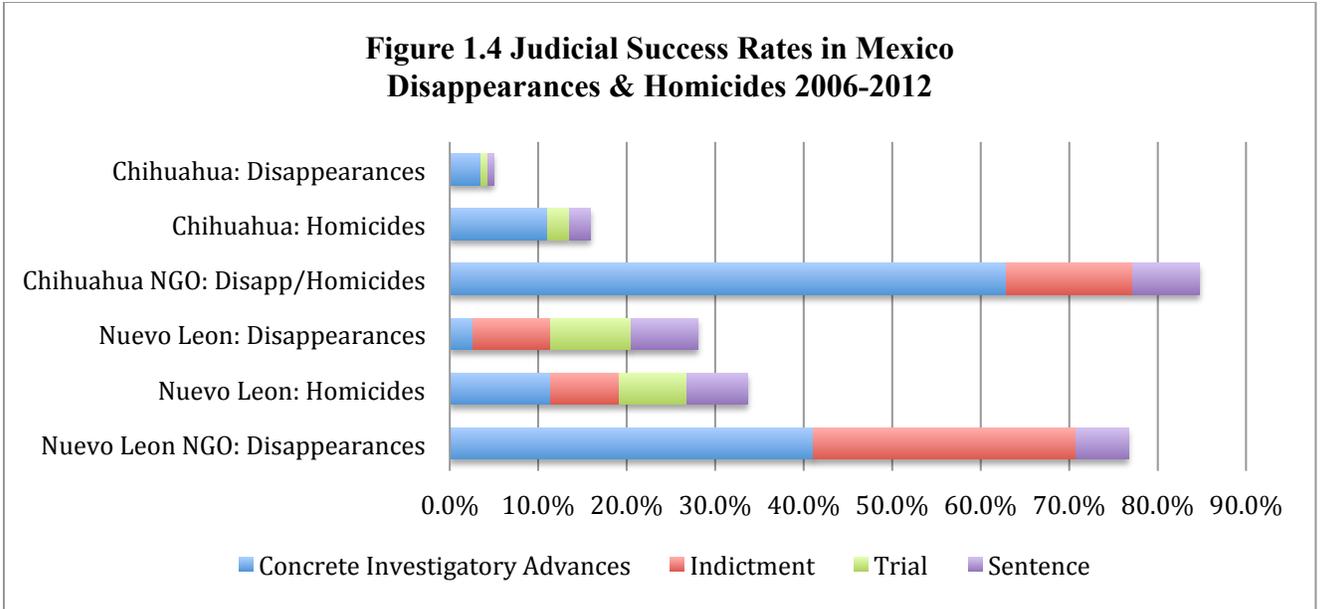
To test this hypothesis, I use large-*n* descriptive judicial statistics in two democracies, Mexico and Colombia, with relatively weak rule of law that are struggling with high rates of violence. I analyze the broad universe of cases of violations of the right to physical integrity – all cases in Colombia, and all cases filed in two northern states heavily affected by violence in Mexico - and compare the results in this universe of cases to the results of cases that were either directly advocated for by NGOs (Mexico) or that were targeted by a coordinated civil society-led campaign (Colombia). To determine the success of these “advocated” cases, I focused on the work of civil society groups that are encompassing, that is, they accept all cases that come to them, and do not select only the strongest cases with the clearest or best evidence. I used original judicial outcomes data sets of homicides and disappearances constructed from information requests to Mexican and Colombian authorities and assembled in collaboration with local NGOs and lawyers, I find that both countries converge on the common judicial outcome of selective judicial success – which I define as a non-random pattern of judicial progress where certain types

of cases experience judicial success while average cases remain in impunity.¹⁷

In Mexico, I compare the judicial success rates in the broad universe of cases to the judicial success rates of cases adopted by two local NGOs. As illustrated below, I find that a case advocated for by an NGO will have, on average, more than double the probability of progressing past the initial investigatory stage than an average case reported to the State Attorney General's office.¹⁸ Most dramatically, in Chihuahua a case of disappearance has only a five percent chance of progressing past the initial investigatory stage. This means that 95 percent of disappearances show no judicial advances – they are in effect reported and immediately closed. If a case is taken up by the NGO, on the other hand, there is an 85 percent chance that there will be some action in the case.

¹⁷ As illustrated in Figures 1.4 and 1.5, in both countries, very few people are sentenced for committing homicides or disappearances: fewer than twenty percent of reported cases of both types of crimes progress past the initial investigation stage in either country, and average conviction rates are below three percent.

¹⁸ "Chihuahua Disappearances," for example, are the number of cases of enforced disappearance and illegal deprivation of liberty that the State Attorney General's Office reported it has received between 2006 and 2012.



Source: Analysis of original data from NGO and state sources

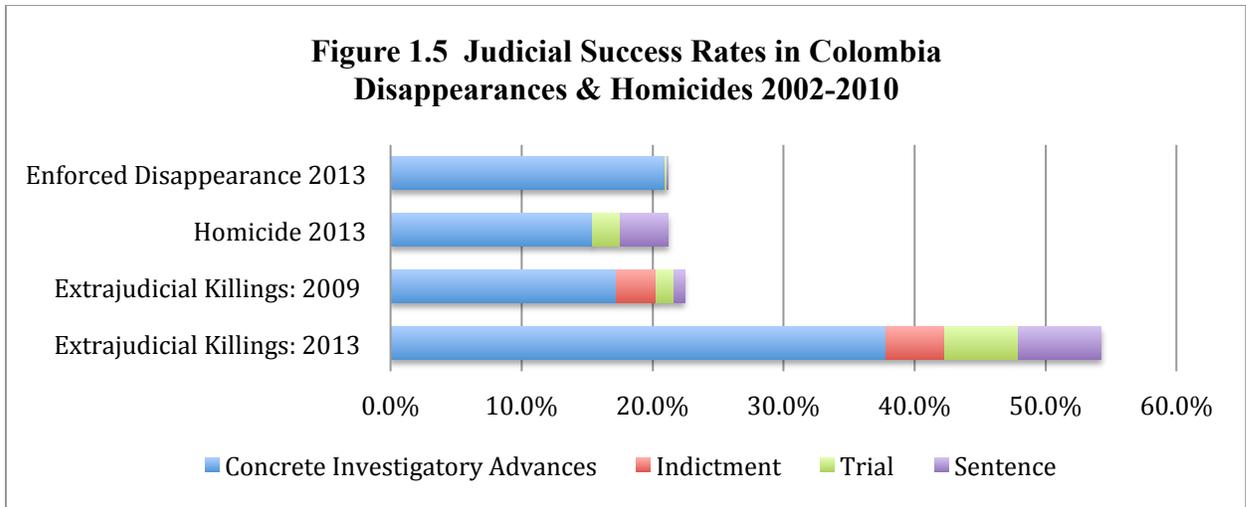
These descriptive statistics confirm the accounts of victims and victim advocates in these two states. Most reported that before joining the local NGO, they were either unable to get investigators to speak with them, or when they did speak with investigators, there had rarely been any action taken on their cases. In Nuevo León, where the rates of judicial success are higher than in Chihuahua, I sat in on a series of meetings in which a local NGO and family members of victims met with a range of state investigators and reviewed the progress to date on each case. I observed that while most cases of disappearances had little to no investigative actions undertaken prior to the case being brought to the working group, as a result of the collaborative strategizing and information-sharing, indictments were issued in several cases, and in nearly all cases concrete investigatory steps were taken.

In Colombia, where impunity has long been a norm in the case of violations of the right to physical integrity especially when state forces are implicated as perpetrators, the

nation's investigators and courts changed the way they treated one type of human rights violation – extrajudicial executions (EJEs)¹⁹ - between 2009 and 2013. While overall rates of impunity for violations of the right to physical integrity (murder, enforced disappearance, torture, kidnapping) in Colombia remained quite high between 2000 and 2013, my analysis reveals that there is a non-random, recent and dramatic improvement in the judicial success rates of cases of EJEs. In 2009, only eleven people had been found guilty and been sentenced for the crime of extrajudicial executions – a lower than one percent rate of conviction. 78 percent of more than 1,300 cases of EJEs had not proceeded past the initial reporting phase. In this 78 percent of cases, no measurable judicial action had been taken, and there was no evidence of active investigation.²⁰ By 2013, 240 perpetrators had been sentenced for committing EJEs, and over half – 54 percent - of just over 3,000 cases showed concrete judicial advances. What explains this transformation in the way the Colombian civilian justice processed cases of extrajudicial executions (EJEs) between 2009 and 2013?

¹⁹ Extrajudicial executions are murders carried out by government officials outside of any legal or judicial process. See UN General Assembly resolutions 53/147, adopted December 19th, 1998, 61/173, adopted December 19th, 2006, on 'extrajudicial, summary and arbitrary executions'.

²⁰ The 2009 figures were obtained from a data request from the Fiscalía General de la Nación by Corporación Jurídica Libertad, a Medellín-based NGO. They include the judicial results for cases of extrajudicial killings committed between 2000 and 2009, that were being investigated by the National Human Rights Unit (NHRU), a unit of the Attorney General based in Bogotá that currently handles 68 percent of investigations into EJEs. The 2013 comparative data cited here is also from the NHRU, and comes from a proprietary database of extrajudicial executions compiled by the Colombian NGO *Coordinación Colombiana Europa Estados Unidos* (CCEEU) and John Lindsay-Poland, the Research Director at US-based NGO the Fellowship of Reconciliation. These data were compiled over the course of ten years through by combining and analyzing data from governmental and non-governmental sources, and represents the combined labor of a broad coalition of Colombian and international NGOs.



Source: Analysis of original data from NGO and state sources

A high-profile scandal erupted when it was revealed that members of the Colombian military had been engaged in a systematic practice coordinating the recruitment of civilians under the guise of employment opportunities. As happened in the case of Leonardo, they would then kill the civilians, and present their corpses as guerrillas killed in combat in order to gain professional rewards. This practice, known as “false positives” within Colombia, mobilized public pressure, and built on more than a decade of advocacy work by Colombian human rights NGOs and the Colombian office of the UN Office of the High Commissioner for Human Rights (UNHCHR). Drawing from interviews with civil society, state and intergovernmental actors, along with third-party accounts of this scandal, I find that the strategic and coordinated advocacy of these civil society groups and international actors channeled the political will generated by a public scandal into systemic change in the judicial system.

In both Mexico and Colombia, despite dramatic systemic institutional, historical and political differences, this evidence confirms the hypothesis that those cases accompanied

by civil society organizations and mobilization are more likely to achieve some modicum of justice than those that aren't.

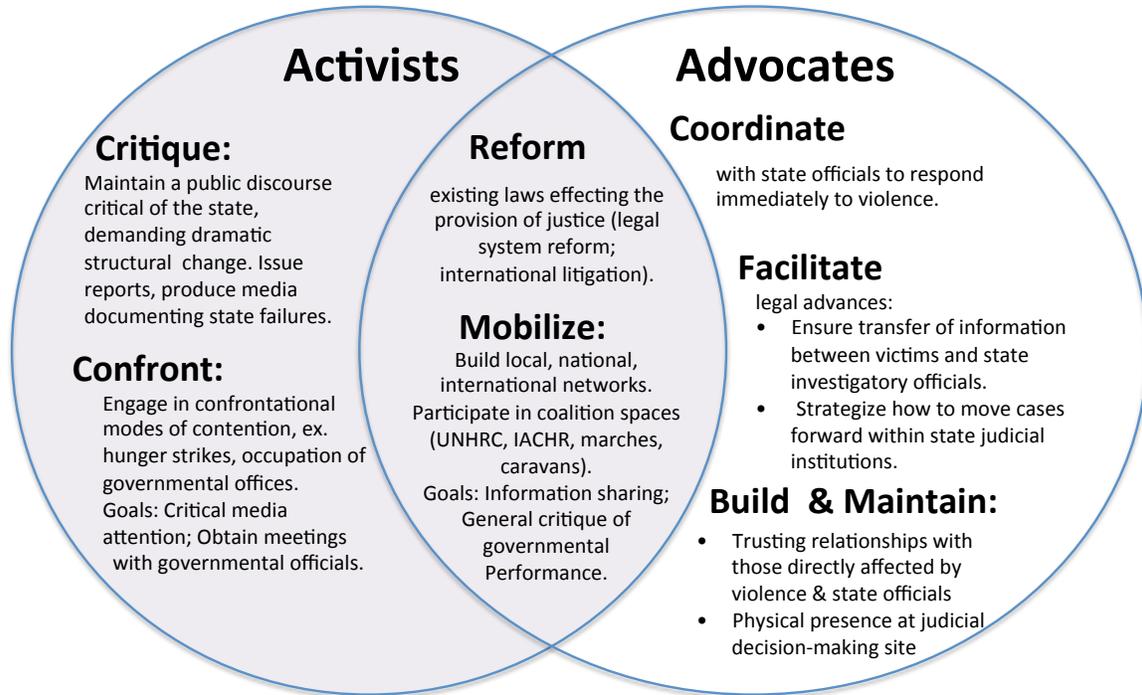
B. What contributes to the success of organized citizen action?

While I find that organized citizen action is an important part of advancing cases through the courts, it is not sufficient: a minority of cases that are taken up and rigorously advocated for by civil society groups²¹ and their allies are investigated by state authorities, and an even smaller number go to trial. What factors influence which “advocated cases” advance in the justice system? In order to answer this question I use qualitative evidence to look within the universe of cases that entail some form of organized citizen action. This allows me to investigate the causal mechanisms linking organized citizen action to the provision of justice. Following the guidelines for both nested research design and most similar case comparison, I first conducted a hypothesis-generating most similar comparison, or what Lieberman calls a “model-building small-*n* analysis” of civil society organizations in three similar states that achieve very different judicial outcomes. I conducted this hypothesis-generating research in three similar northern Mexican states that each had experienced a dramatic jump in drug-related violence after 2008, and that had been ruled by the dominant Mexican political party, the PRI, since at least 2004.

²¹ Throughout this dissertation, I use the following terms interchangeably: human rights groups, civil society organizations, victim advocate organizations, and several other permutations of these terms. This diversity in terminology reflects the many spaces that the organizations of this study occupy: each is a political actor that defines itself as part of the human rights community. Most of the organizations of focus are registered with the state as Civil Associations, and each in some way engages in legal advocacy. Most consider themselves as part of larger social movements, even if they are not a social movement in and of themselves.

Drawing on both semi-structured interviews and ethnographic evidence gathered during multiple visits over the course of two years, I found that the judicial success of civil society groups was attributable not to any differences in the cases they worked on or the socio-economic status of the victim (as Brinks, 2008 predicts); neither was variation in the level of international solidarity leveraged on behalf of a particular set of cases a decisive factor (as Keck and Sikkink, 1998, might predict). Rather, the relevant difference was among the actions that local civil society groups engaged in, and specifically in the modes of contention they employed and the relationships they built (or did not build) with state officials. To capture this divide in the activities and strategies of civil society organizations, I organize civil society groups and their allies under two identities, activists and advocates:

Figure 1.6 Activists and Advocates



* *Advocates* build trusting relationships with both state investigatory officials and family members of victims of violent crime. Advocates are able to use their access to state officials to push for investigations and prosecutions to stay on track, and to call for rapid state responses to new threats and violent events. They serve as a bridge, or interlocutor, between the state and those directly affected by violence, and must have legitimacy with both of these constituencies to effectively occupy this role. Advocates must have to have an ongoing physical presence at the judicial decision-making site, and are the key to embedding judicial actors in civil society networks.

* *Activists* generate a political cost to impunity. They are institutional outsiders who

publicly and regularly denounce impunity, demand structural change, and take a consistently and vocally critical role of the state's justice system. They may have little contact with the state, or the contact they have may be hostile and contentious. Activists produce the strongest political cost when they maintain a permanent presence at the judicial decision-making site while also building national and international ties.

Based on this initial exercise, I hypothesize that activist and advocate identities are important because their configuration plays a definitive role in the provision of justice. I posit that when both groups are physically present at the judicial decision-making site, the combination of political pressure, information sharing, and clear routes of communication channel government action into investigatory advances lead to comparative judicial success. When only advocates are present, usually a temporary situation that occurs after an activist group has transitioned into an advocate and before a new activist group has emerged, the provision of justice will be comparatively moderate, as there is a lack of political pressure being exerted on judicial officials. Finally, when only activists are present, there will be comparatively low provision of justice because there is no link between the state and the victims of crime that channels political will into investigatory and judicial action.

Figure 1.7 Advocates, Activists, and the Provision of Justice

Social Movement Actors Present	<i>Relative Provision of Justice</i>
Advocate/Activist	High
Activist	Low
<i>Advocate</i>	<i>Medium</i>

My second hypothesis, therefore, is that the presence, or absence, of activist and advocate groups at the judicial decision-making site significantly influences the provision of justice. To test this hypothesis, I next conduct two most similar paired comparisons, what Lieberman calls “model-testing small-*n* analysis.” In Mexico, I compare the results achieved by different civil society organizations in one state - Chihuahua. In Colombia, I compare the judicial results for cases of extrajudicial killings in two different years, 2009 and 2013. As I will elaborate on in Chapters Four and Six, the importance of advocates and activists in influencing the judicial success of civil society-led efforts to achieve justice in both of these cases is confirmed by these hypothesis testing exercises.

Figure 1.8 Summary of Research Design: Testing Hypothesis 2

Hypothesis:	Research Design	Level/Units of Analysis	Outcome to be explained	Data & Evidence
H2: The presence of <i>activists</i> and <i>advocates</i> at the judicial decision-making site strengthen the provision of justice.	Most Similar Systems Design	Sub-state: 2 Mexican organizations within one state	Different: Varying success of advocated cases	Qualitative: Interviews, Ethnography
		Temporal: Judicial Status of Cases of Extrajudicial Killings in 2009 vs. 2013		

In sum, I find that judicial institutions are neither destined to be ineffective, nor are they best understood by looking solely at their rules and reforms. Rather, they are heterogeneous institutions in which relationships between investigators, activists, advocates and victims of crime are key to understanding the production of justice and impunity. Instead of focusing solely on the judicial branch of government, I hone in on the informal institutions and local political dynamics that emerge between different parties that have interests at stake in judicial outcomes. Focusing on the social

embeddedness of state institutions enables us to begin to unravel the puzzle of why and under what circumstances judicial institutions perform their most basic task: providing justice.

III. Central Concepts: Activists and Advocates, Organized Citizen Action and Rule of Law

I have introduced the concepts of advocates and activists, organized citizen action and rule of law. In this section I clarify how I derive and situate these central concepts.

A. Activists and Advocates

While I define activists and advocates by what they do, this heuristic does not tell us why groups end up as activists or advocates. It is not due to their organizational identities: in Mexico and Colombia, I find that NGOs, social movements and interstate actors, particularly certain UN actors, can be either activists or advocates. What, then, explains why groups end up as activists or advocates? I argue that there are two constitutive elements for activists and advocates: *access* to state officials, and *beliefs* about the state and about who is responsible for violence.

Figure 1.9 Constituting Activists and Advocates: Beliefs and Access

Access	No Access to state investigatory officials	Access to state investigatory officials
	Beliefs	
Radical/Revolutionary: <i>State is responsible for all violence</i>	Activist	Activist
Reformist: <i>Criminals and a few corrupt state officials are responsible for violence.</i>	Activist	Advocate

B. Access

The first element, access, is definitive: without access, a group cannot be an advocate. I

draw from interest group literature to define access:

“Access” denotes a close working relationship between members of Congress and privileged outsiders – interest groups, political parties, promoters of causes. In granting access, lawmakers give serious, sustained attention to the policy views of their favored informants. Empirically, therefore, access refers to the status of outside actors in congressional deliberations. It refers, moreover, to the status conferred upon favored outsiders by formal actors, by members of Congress.²²

Access is fairly straightforward to assess. For example, if the head of an NGO has the cell phone number of the Attorney General, and he answers and is responsive to her calls, she has access (Ch. 4). When information presented by a group outside of the governmental investigative bureaucracy leads to cases being opened and significant resources being devoted to their investigation, there is access (Ch. 6). When a new case of disappearance

²² In my study, of course, the formal actors granting access are not members of Congress, they are judicial officials. And instead of political parties and interest groups, I am talking about organized victims of violence and their advocates. From Hansen (1991), *Gaining Access: Congress and the Farm Lobby, 1919-1981*, University of Chicago Press, Page 22.

occurs and a civil society advocate calls upon local policemen and investigators, and they meet together to formulate a rapid response strategy, there is access (Ch. 4).

Lack of access is also usually starkly clear, and is characterized by state discourse and actions ranging from critical to violent towards these groups. In Colombia, the Uribe administration consistently accused human rights activists of being members of armed revolutionary groups, and in many cases members of human rights groups were targeted for repression and prosecution under false pretenses by the government (Ch. 5). In Mexico, government officials complained about the public and unrelenting pressure of certain civil society groups (Chihuahua, Ch. 4). While “access” is not enough to guarantee that a group is an advocate, *lack* of access is sufficient to ensuring that they are not. In other words: no access to state officials means that a group is limited to an activist role.

While access is fairly straightforward to measure, the mechanisms through which a civil society group gains access to the state are more complicated and contingent on the preferences, personalities and choices of state actors. The extent to which individual judicial actors can decide whether to form relationships with civil society actors depends on many factors that are insulated and relatively independent from the influence of civil society actors. For example: any one person’s relative power and standing within the bureaucracy; the internal bureaucratic structures and incentives of the judiciary; and the threat that illegal armed groups pose to judicial actors. There are, however, ideational, relational and political mechanisms that can facilitate the granting of access to civil

society actors by previously closed states.

In the end, state actors determine access: they decide whether, when and under what circumstances they will form relationships with civil society representatives. When groups are not able to gain access to the state, social movement scholars' conceptualization of closed political opportunity structures captures the dynamic. This is the case in state of Tamaulipas in Mexico, for example, and also for cases of regular homicides (as opposed to extrajudicial killings) in Colombia during the entire period of study in this dissertation. In both of these cases, state actors remain unwilling to form relationships with civil society actors. While I was unable to interview these state actors, the shared understanding of civil society and media are that while there are some actors within the judicial bureaucracy that could be allies, the personal and professional risks they would face if they reached out to civil society are simply too high to make this feasible.

In all of the cases in which advocates emerged, however, civil society organizations were able to leverage access. That is, the in every case of successful advocate emergence, the state did not decide to open its doors to civil society. Rather, civil society actors employed at least one of the following five mechanisms to successfully pry open access to the state. Importantly, this is a sequential story: activists always emerge before advocates, and use the following mechanisms to gain access to the state and enable the emergence of advocates. In the Judicial Breakthrough Model introduced in this chapter, I claim that activists chip away at the blockage between civil society and the state. How,

exactly, does this chipping away operate?

1) Imposition of reputation costs

A constitutive part of the openness of judicial institutions is the political cost of impunity. Activists are able to impose reputational costs on judicial actors, especially but not limited to elected officials and bureaucrats in visible leadership positions like the State Attorney General, through mobilization and media campaigns. As these reputation costs increase, preserving impunity becomes more costly, and judicial actors will become more likely to look for options that enable them to mitigate these costs.

2) Reframing “victim” as a subject worthy of justice

In all of my cases activists were also doing important ideational work by reframing the concept of “victim.” In both Mexico and Colombia, a key part of maintaining impunity was the implicit criminalization of victims of these crimes. As long as those who were killed or disappeared could be reasonably claimed to be at fault for whatever befell them, they could be excluded from basic citizen rights including due process and protection. By extension, it would not be appropriate for state officials to meet with family members of the deceased: if the son had been a criminal, it was likely his family was also implicated in nefarious activities.

Activists challenged these state narratives blaming victims through tried and true

movement strategies: as Rosa Parks was carefully chosen to portray a sympathetic victim of racism and Jim Crow, Javier Sicilia's son, an upper-class, light-skinned Mexican medical student, was the embodiment of innocence that catalyzed a national movement. Leonardo Bernal, the left-handed disabled young man accused of being a guerrilla commander and firing at soldiers with his right hand, similarly captured the imagination of Colombians. Activists in both countries contested the state narrative of victim-blaming by embracing a competing frame that asserted that all victims of homicides and disappearances in the case of Mexico, and of those executed by the military in the case of Colombia, were innocent unless proved otherwise, and hence deserved justice. While this remains a disputed frame, the media in both countries significantly shifted their dominant narratives as a result of these movements. This shift is a key part of decriminalizing the family members of victims, and making state actors more open to meeting with them. If they aren't criminals, and if in fact their loved ones are citizens with rights to justice, it seems much more reasonable for state investigators to meet with these groups.

3) Soft Diplomacy (as opposed to naming and shaming)

While naming and shaming, which I refer to above as imposing reputational costs, is a mechanism which is part of gaining access to the state, groups that eventually became advocates in both countries also self-consciously walked a line between criticizing the state and moderating their discourse to facilitate relationship-building with potential allies within the state. In Chapter Six I talk extensively of

how the United Nations High Commissioner for Human Rights (UNHCHR) was able to fulfill the advocate role in Colombia. While they transitioned into this role after intensive activist pressure in 2008, they had known about the pattern of extrajudicial executions since 2003. When they pushed too hard on the Colombian state to stop this practice in 2005, the head of the organization was forced to leave Colombia and President Uribe threatened to terminate Colombia's relationship with the UNHCHR. Restraining criticism in the name of relationship-building is something all groups that will eventually will be advocates must negotiate.

4) Brokerage by higher-level actors

Government bureaucrats in both Mexico and Colombia respect state and non-state actors located above them in the continuum from local to international. That is, state-level bureaucrats respect nationally prominent civil society leaders and politicians, while national-level actors respect actors anchored to international organizations and institutions. This dynamic helped the UNHCHR become an advocate in Colombia, and in Mexico the intervention of these higher-level actors was a necessary part of conferring legitimacy onto local groups. In Chihuahua, international groups met with the Chihuahua governor to facilitate the formation of a new investigative unit, and these international groups assured that the unit would essentially be run by a local activist – who was then able to transition into an advocate role. In Nuevo León, leaders of a national movement obtained a meeting for the local organization with the State Attorney General's office.

5) Deepening the Contradictions: Identity and State Investigators

State officials who later became the allies of advocates most often indicated that they believed, prior to granting access to civil society actors, that they were doing their job if they tried to change the state from the inside; to achieve small victories that moved the bureaucracy forward in some way. These officials changed their actions only when they were persuaded that continuing with the status quo was no longer compatible with their identity and self-understanding as promoting positive outcomes within flawed institutions. This is clearest in the Colombian case: when the UNHCHR was able to get key investigatory officials to interview soldiers accused of killing innocent young men, the investigators realized quickly that the soldiers were guilty. They then came to the conclusion that the Colombian army was directly implicated in committing and facilitating, heinous acts, and that if they didn't investigate these cases, then they too would be implicated in the systematic execution of innocent civilians. Choosing to investigate these cases was a life-threatening decision for these investigators, and cannot be understood simply as a rational decision. Rather, when the contradictions between what they did at their job (participate in the construction of impunity) and who they were (moral actors) became too great, they changed their behavior and were willing to risk their lives to bring their professional activities into line with their moral visions of themselves.

As implied by the 2x2 model above, however, access to state judicial actors is a necessary, but not sufficient condition for advocate emergence. Beliefs are the second

constitutive factor or activists and advocates.

2. Beliefs

Beliefs are more difficult to assess than access, and do not map as clearly onto activist or advocate categories. We can never, of course, really know what individual members of groups believe, and looking in the obvious places, e.g. organizational mission statements, are often unhelpful as they are overly general, and usually profess general support for human rights. Beliefs about the nature of the state and the attribution of blame for violence are more apparent in looking at public statements over time: activists groups will almost never praise any state action, while advocates will almost never condemn the state as a whole. Advocates most often offer measured recognition and limited praise for particular improvements or achievements in a certain case or set of legal cases, but will couch these positives within the more general framework of the shortcomings of the state system to provide justice and protect human rights.

In terms of their beliefs about who is responsible for violence, activists generally blame the state. For example, in Coahuila, the local activist group categorizes all disappearances as enforced disappearances,²³ that is, they blame the state directly for all cases of disappearances, even if agents of the state had no direct role. They focus on the

²³ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance states: “For the purposes of this Convention, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”
<http://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

acquiescence of the state in facilitating a culture and practice of impunity. Their advocate neighbors in Nuevo León, on the other hand, differentiate cases of disappearances they receive into “enforced disappearances” and “disappearances.” They regard a case as enforced disappearance only if there is evidence that state agents were directly involved in the disappearance.

If beliefs are hard to measure and categorizing them is inherently fraught, why attempt to do so? Beliefs become definitive when a group is given access. If they don’t have access, it doesn’t matter what they believe: the actions of radicals and reformers might look quite similar as both are frozen out of direct communication with the state. But if groups gain access, their beliefs become very important for determining how they will approach that access and the relationships with state actors. If they have access but believe that the state is incapable of true reform, or that reform is not their goal, they will not become advocates. They won’t build good faith relationships with the state that facilitate collaboration and information sharing around the investigative details of cases.

While the trend is that groups with more radical beliefs will behave as activists, and those with more moderate beliefs will, given access, behave as advocates, there are exceptions. For example, a group may actually believe that the state is reformable, but to choose to behave like an activist – engaging in confrontational tactics, maintaining a critical discourse – for several reasons. First, they might find it strategically advantageous in the short term, as the activist tactics may strengthen their relative bargaining position by exerting pressure on the state and increasing the political cost of impunity. Second, they

might actually want to be advocates, but the state refuses to grant them the necessary access. Without this access, their contentious repertoires may return to being more activist-like. Finally, the dynamics between and among civil society groups may result in inter-movement spillover (Hadden, 2014), with contentious actions and activist stances becoming the go-to repertoire for groups concerned with impunity.

B. Organized Citizen Action

“Organized citizen action” is an inclusive term that describes the varied forms of activities that I observed during my fieldwork: negotiations, protests, meetings, marches, press conferences, litigation, coalition building, etc. The groups “organizing” these actions sometimes look like the social movements political scientists and sociologists have observed: “collective challenges by people with common purposes and solidarity in sustained interaction with elites, opponents, and authorities” (Tarrow, 1994, 4). Other groups that organized actions – those less focused on challenging the state – are better thought of as members of civil society.²⁴

Scholars working in the social movements tradition have laid the framework through which we understand how mobilization and “contentious episodes” shape and are shaped by formal institutions (e.g., elections, political parties, courts) (McAdam, Tarrow, Tilly,

²⁴ I use Jean Cohen’s (1994, pg. ix) definition of civil society, which claims social movements as a subset of civil society: Civil society is a “sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication.” While Cohen helps us define *who* constitutes civil society, Habermas (1991) tells us what civil society *does*: “civil society is made up of more or less spontaneously created associations, organisations and movements, which find, take up, condense and amplify the resonance of social problems in private life, and pass it on to the political realm or public sphere.”

2001). The basic insights of political opportunity structure,²⁵ resource mobilization, framing and the radical flank effect (Tarrow, 2011; McAdam 1992, 1999),²⁶ are the building blocks I use throughout this dissertation to understand why movements organize under certain circumstances and how the dynamics among them shape their success. An associated but distinct group of scholars has focused on how social movements interact with the law. Those who study legal mobilization, defined as “when a desire or want is translated into an assertion of right or lawful claim,” (Zemans, 1983), have successfully made the case that “legal mobilization is one of the most important but least studied modes of citizen participation,” (McCann, 2008); that (as Miller and Sarat’s 1980-1 disputing pyramid tells us) “a great deal of law is in interactions far from courtrooms,” and that both movement resources and legal consciousness are important in determining whether citizens engage in legal mobilization.

Legal mobilization as a scholarly field and social phenomena in the US was born of an optimism about the role law could play in promoting justice and social change following important decisions and struggles in the 1950s and 1960s. These experiences spawned debates about whether, indeed, law can be used to effectively leverage social change (McCann, 1994; 2006), or whether it actually frustrates and co-opts the energy of social

²⁵ McAdam et al 1999 summarizes four key components of Political Opportunity Structure: 1. The relative openness or closure of the institutionalized political system; 2. The stability or instability of the broad set of elite alignments that typically undergird a polity; 3. The presence or absence of elite allies; 4. The state’s capacity and propensity for repression.

²⁶ McAdam 1992 describes the radical flank effect in the following way: “a movement stands to benefit when there is a wide ideological spectrum among its adherents. The basic reason for this seems to be that the existence of radicals makes moderate groups in the movement more attractive negotiating partners to the movement opponents. Radicalness provides strong incentives to the state to get to the bargaining table with the moderates in order to avoid dealing with the radicals. In addition, financial support flowing to moderate groups in the movement increases dramatically in the presence of radicals.”

change advocates (Dolbeare & Hammond, 1971; Rosenberg, 1991; Morag-Levine, 2003). Those legal mobilization scholars working in Latin America and other areas of the Global South have focused on the innovative ways that social movements are using law as part of counter-hegemonic projects that challenge neo-liberalism, especially in the realm of social, economic and cultural rights (de Sousa Santos, and Rodríguez-Garavito, 2005; Rajagopal, 2006).

In Mexico and Colombia, the groups that are the focus of this study do not look to the judicial system for resolution of their cases because of a burgeoning faith in the justice system, nor as part of a counter-hegemonic project which seeks to claim new rights and challenge neo-liberalism. Rather, victims of violence have generally approached the state with great reluctance, and out of necessity. For family members of disappeared or murdered people, the justice system is the primary target of claims: their goal is to find their loved ones, and to hold the perpetrators of those who harmed them legally accountable. They must engage with the state because the cases being pursued are clearly and squarely in the state's domain. Despite these differences, however, this study is indebted to legal mobilization scholarship for many of its insights into the complicated, multi-directional and contingent nature of social movements' interactions with the law and legal institutions. In particular, McCann's (1994, Ch. 7) close study of the ways in which legal "losses" experienced by the pay equity movement were actually constitutive of expanding rights consciousness informs the way I think through the ideational influence of both activists and advocates.

Finally, scholars of state-society relations have recently focused on how state-civil society collaboration can improve governance and deepen democracy (e.g. the case of participatory budgeting in Brazil; Baiocchi, Heller and Silva, 2011). Though not focused on the judiciary, this literature provides an alternative to the ideal of an independent Weberian bureaucracy, instead focusing on the importance of embedding state actors within civil society networks (Evans 1995, 1996), and of informal institutions. This literature is helpful in thinking through how government officials interacting with organized citizens may affect governance outcomes, especially in non- or partially-democratic regimes (Tsai, 2007).

C. Rule of Law

While this dissertation primarily analyzes how organized citizen action affects “judicial success,” which I defined previously in this chapter quite narrowly as “an ordinal measure of how far within the justice system a case progressed,” I frame the project in broader terms, and ultimately make a claim that organized citizen action strengthens the rule of law under certain circumstances. Why use the concept of the “rule of law” - a notoriously difficult-to-define concept? And why do I believe that it is important to highlight that organized citizen action does something that isn’t captured by “judicial success”?

As I mentioned earlier in this chapter, social accountability scholars implicitly adopt a

“thin” definition of the rule of law.²⁷ Accordingly, most of their analyses have centered on how citizen action promotes legal accountability in high-level politics,²⁸ specifically the extent to which the president is constrained in his/her actions. This thin conception of the rule of law has largely been rejected by most rule of law scholars in favor of a “thicker” conception (Dworkin 1985; Selznick, 1999; Magen, 2009; Margulies, 2013) that privileges a principle-centered conception of the rule of law. Under this morally substantive formulation,

legal actors should concern themselves with the ‘spirit,’ not merely the ‘letter’ of the law - and that spirit means values that can be realized, not merely protected, through substantive law, not merely procedural safeguards (Magen 2009, 59, drawing on Selznick, 1999).²⁹

In short, while a thin conception of the rule of law emphasizes negative power – the power to constrain - a thick conception of the rule of law emphasizes positive power - the power to construct. The latter goes beyond measuring judicial results, and invites thinking about how to build the good governance practices and institutional strength necessary to fulfill the promise of the spirit of the written laws.³⁰ This dissertation

²⁷ Proponents of a thin understanding of the rule of law “focus on the minimal conditions necessary for law to restrict sheer arbitrariness in the ruler’s use of power” and argue that there must be an “essential separation of law from politics” (Magen 2009, 59). Social accountability scholars talk about the aims of social accountability, which they call legal accountability, in similar terms: “to hold a government legally accountable implies the ability to control governmental actions, to be certain that they do not infringe on the law or due process” (Peruzzotti and Smulovitz, 2006, 11; 6).

²⁸ When social accountability has been linked to judicial action, it has been limited almost exclusively to high-profile cases (see Behrend, 2006). An exception is Claudio Fuentes’ chapter in Peruzzotti and Smulovitz (2006). Fuentes look at social accountability’s ability to constrain low-level political actors – the police – in Chile, and finds that social movements fail to constrain police violence in Chile due to a closed political opportunity structure made up of autonomous police forces, limited media capacity and willingness to cover the issue, along with the framing decisions of social movement leaders.

²⁹ In another formulation: A thick, substantive or positive (though anti-positivist) conception of the rule of law... insists that the rule of law cannot be divorced from fundamental elements of political morality and institutional practicality. In a substantive conception, laws enshrine and protect political and civil liberties as well as procedural guarantees (Magen 62).

³⁰ Rule of law scholars, and especially scholar-practitioners (Carothers 2006, 2009; Kleinfeld, 2012; Golub, 2006), have devoted significant energy to debunking the causal link between “thin” rule of law programs which focus on short-term fixes, like the passage of certain laws or training courses for legal professionals,

examines how civil society actors can in fact exert positive power, building the capacity of the state to enforce its own laws and guarantee citizen rights.

IV. Plan for the Dissertation: Chapter Descriptions

In *Chapter Two*, entitled *Data and Methodology: Human Rights, Judicial Outcomes, and Organized Citizen Action*, I elaborate on the methodology employed in this dissertation. I discuss the unit of analysis and research design I use, presenting a justification for the most different and most similar research designs. I then discuss how I conceptualize and operationalize my primary dependent variable, judicial outcomes in lower courts, and briefly describe the evidence used to operationalize my primary independent variable of interest, organized citizen action. My data were collected during two and a half years of fieldwork, during which I conducted more than 7,500 hours of ethnographic observation and interviews with 96 different human rights and victims' organizations. I also compiled original databases of judicial outcomes from state and non-governmental sources in both Mexico and Colombia.

In *Chapter Three*, entitled *A Tale of Two Mexicos: State Violence and Organized Citizen Action*, I argue that the use of violence by the federal vs. state government differs greatly, and that these different uses of violence have inspired correspondingly different, and at times conflicting, responses amongst Mexican civil society and human rights groups. In this chapter, I start by outlining these temporally parallel but distinct timelines of the use

to the complex problem of rule of law. Kleinfeld is particularly helping in thinking through the implementation of rule of law reforms, and calls for recognizing that strengthening the rule of law starts with changing the patterns of power between state and society and is based in local context and knowledge, rather than cookie-cutter programs.

of violence by the Mexican state, and go on to map how civil society efforts responded to these different strains of violence. I argue that the human rights community in Mexico arose in response to spectacular violence committed almost exclusively by federal government agents, most egregiously during Mexico's Dirty War. The coordinated federal government policies of massacres, kidnapping and torturing that these human rights activists, located mostly in Mexico City, responded to, however, bore almost no resemblance to the daily occurrence of low-level violence that most Mexicans experienced in the twentieth century. This local violence was a product of weak state institutions and local politics which were run by local strongman who at first benefitted from, and later battled, drug traffickers.

I argue that this bifurcated experience of the state has led to widely divergent beliefs among civil society groups. Activists, on the one hand, have adopted international human rights frameworks that regard the state as a coherent actor with a presumed monopoly of violence that can and should be held responsible for all violence within its borders. Local groups, or national groups who are interested and attuned to local variations of the state, however, often have a more flexible, empirically informed set of beliefs about the state that recognize its heterogeneous nature at the local level. While this chapter is in no way an exhaustive review of state violence in Mexico, it attempts to contribute to our understanding of how the Mexican state uses violence by placing the divide in federal/local at the center of our understanding, and tracing how this divide has influenced the beliefs and actions of organized citizens.

In **Chapter Four**, entitled *Fighting with the ocean: Civil Society Dynamics and the Provision of Justice in Northern Mexico*, I examine two questions: (1) Why do activists and advocates emerge in some local contexts and not others? And (2) how and why does this matter for determining judicial success? To answer these questions, I present case studies of civil society organizing against violence in three Northern Mexican states, Nuevo León, Coahuila and Chihuahua. In Chihuahua, I present a most similar case comparison within the state, looking closely at civil society activity within the state's two largest cities. In response to my first question, I argue that while activist emergence is described largely by changes in state violence and coercive capabilities highlighted in Chapter Three, the transition of activists to advocates requires two necessary conditions. First, activist groups need to be granted access to state officials. This access is most often facilitated by a more politically powerful outside party, located at the national or international level, whose support legitimates and certifies the local actor as a worthy interlocutor. Second, the activist groups' beliefs must be sufficiently reformist to allow them to imagine the possibility that interacting with state officials might be productive in achieving their goals. In answering the second question posed in this chapter, how and why do activists and advocates matter this matter for determining judicial success, I review the experiences of local groups that have litigated cases with the state, highlighting the different roles activists and advocates play in influencing investigative and judicial processes. I argue that though both national and international groups are important in determining judicial outcomes, it is the relationship between local organizations and the state that matters most in the provision of justice.

In **Chapter Five**, entitled *Colombia: The Impossibility of Civil Society as “Advocates” in the Context of War*, I present the history and context of state-civil society relations in Colombia. Colombian civil society mobilization against violations of the right to physical integrity date back to the 1960s. Historically linked to the armed left, these mobilizations – some of which targeted impunity – were unable to produce significant breakthroughs in judicial results until the false positives scandal of the late 2000’s, which will be discussed in the following chapter. I argue that this failure to win judicial results was due to the political impossibility of an insider advocate to establish a working relationship with the state. NGOs believed, with extensive evidence, throughout this time that the government was targeting them – that is, those who should have been in the position to be insider advocates were themselves the targets of government-sponsored persecutions and executions. In this chapter, I trace the emergence of NGOs and social movements that focus on holding the state accountable for violation of the right to physical integrity and highlight their frustration in the face of ongoing repression and judicial failure.

In **Chapter Six**, entitled *The Politics of Disrupting Judicial Inertia: How the Colombian State Began to Punish its Own*, I explore a case of dramatic, rapid systemic change in the judicial success rates of extrajudicial killings in Colombia. In 2009, 78% of more than 1,300 reported cases of extrajudicial killings had not progressed past the initial reporting phase. By 2013, more than half – 54% - of just over 3,000 cases showed concrete judicial advances. This shift in judicial success rates is particularly surprising given that extrajudicial killings represent a most difficult case: the government, specifically the army in this case, is punishing its own.

What accounts for the dramatic shift in judicial success of these cases? I find that a combination of institutional openness to change, together with pressure from advocates and activists are the keys to facilitating this systemic change and remarkable increase in judicial success. In this chapter I show how the coordinated actions of civil society groups, international actors – especially the Office of the UN High Commissioner on Human Rights - and civilians inside of the Colombian government led to judicial transformation.

In the final chapter of the dissertation, entitled *Towards a Participatory Understanding on the Rule of Law*, I first review my argument and explore alternative explanations. Next, I take a step back from the Mexico and Colombia cases and reflect on the broader policy and theoretical implications of my findings. I propose a *supply chain of justice*, in which state and non-state actors situated in different locations facilitate the relationships, information transfer and institutional processes in order for the crime against one victim to make it through the milieu of state and non-state actors to result in the conviction of a guilty party. I argue for the importance of considering the health and capacity of the judicial supply chain as a whole, and focus my policy recommendations on the most neglected link in the supply chain: local non-state actors. These under-studied actors are crucial in changing the dynamics that can lead to increased crime reporting rates. I also argue for more research into the factors and processes that influence the decision-making of judicial actors. I close with a discussion of the theoretical implications of these findings for scholars seeking to understand the mechanisms that strengthen the rule of

law, state capacity, and state-society relations. I explore the circumstances under which organized citizen action may be a mechanism that triggers investigatory transparency and higher rates of crime reporting. I conclude by reflecting on the implications of a more participatory, bottom-up understanding of judicial activation and rule of law efforts for democratic quality.

V. Summary

In both Mexico and Colombia, there is a small chance that a reported crime will go to trial, and the statistics are worse for solving violent crimes. Yet, some cases are investigated, brought to trial, and have perpetrators, including state officials, sentenced. Why do some cases advance through the justice system while so many others do not? And what can this teach us about how justice is achieved and rule of law strengthened?

In this dissertation I examine the conditions under which judicial systems plagued by bureaucratic inertia can be activated to investigate and prosecute those responsible for crimes that take a life. Organized citizen action is a key to strengthening the rule of law. I use a thick definition of the rule of law, and focus on how governments can hold those accountable who violate their citizens' most basic right. Using Mexico and Colombia as case studies, I illustrate the importance of organized citizens in cases of murder and disappearance. These groups are most effective when there are both advocates and activists present at the judicial decision-making site, with advocates facilitating the provision of justice, and activists providing the necessary political pressure to oblige the state to work with the advocates and set the agenda for long-term institutional

transformation. I propose the *Judicial Breakthrough Model* in which the key site of judicial contention is within the target state; that local judicial actors are gatekeepers to justice; and that international actors accompany and strengthen local activist and advocate efforts to access justice.

This dissertation contributes to a research agenda that seeks to understand the mechanisms and processes through which organized citizen action contributes to state accountability and the construction of the rule of law. Additional research is certainly needed to see whether these findings hold true in other parts of Latin America, as well as other violent democracies throughout the world. This research moves the conversation of how to strengthen the rule of law beyond institutional and state-led explanations to a dynamic, society-led one that considers how power and relationships play an important role in the protection of our most basic right.

Chapter Two

Data and Methodology: Human Rights, Judicial Outcomes, and Organized Citizen Action

I. Introduction

In the previous chapter I introduced the research question, hypotheses and methodology that guide my research. In this chapter, I elaborate on these elements, focusing especially on the logic of the research design. Additionally, I give basic descriptions of the justice systems in both countries.

Figure 2.1 Summary of Research Design

Hypothesis	Research Design	Level/Units of Analysis	Outcome to be explained	Data & Evidence
H1: Organized citizen action makes the provision of justice more likely.	Most Different Systems Design: <i>Variation in federal/unitary system; ongoing civil war; strength/ age of democracy; role of state in violence</i>	National: Colombia; Sub-National: Mexico (2 northern states)	Common: Selective Judicial Success	Descriptive Statistics: Judicial and Advocacy Databases. Interviews, Ethnography
H2: The presence of <i>activists</i> and <i>advocates</i> at the judicial decision-making site strengthen the provision of justice.	Most Similar Systems Design	<i>Hyp generating:</i> 3 Mexican org's in 3 states <i>Hyp Testing1:</i> 2 Mexican org's in 2 cities, within 1 state <i>Hyp Testing2:</i> Temporal variation in Colombia: Judicial Status of Cases of Extrajudicial Killings in 2009 vs. 2013	Different: Varying success of advocated cases	Qualitative: Interviews, Ethnography

First, I explain the unit of analysis employed throughout the dissertation, case selection and the logic employed in the most different and most similar case comparisons. Next, I briefly describe and explain how I operationalize my primary dependent and independent variables of interest.

II. Concepts, Units of Analysis and Research Design

A. The right to Physical Integrity, Human Rights and Victims: Key Concepts

I have chosen to focus this dissertation on investigations into the crimes of disappearance and homicide. Why focus on these crimes and not others? In countries struggling with violence, and especially in democracies, arguably the most fundamental duty of the state – to protect the lives of its citizens - comes into sharp relief. The foundational thinkers of the Western political theory canon recognized the protection of human life as the primary function of the sovereign state.³¹ When we begin to talk of violence that emanates from the state itself, or indeed state sponsorship of violence as de facto policy, this represents a fundamental betrayal of the most basic legitimacy of the state. If the state cannot prevent or prosecute attacks on the lives of its citizens, specially when the state itself is implicated as a perpetrator, I argue that this is a critical undermining of the social contract; it shakes the foundations of state and democracy in a way that the failure to prevent and prosecute other crimes does not. Impunity in cases of homicide and disappearance is therefore a *crucial case* in the consideration of the construction of the rule of law.

³¹ See Thomas Hobbes 1651, *Leviathan*; John Locke 1690, *Second Treatise of Government*, and Anne Orford, 2011, *International Authority and the Responsibility to Protect*, chapter 3.

It is important to be explicit that this study includes cases that international law and human rights organizations usually regard as human rights violations – that is, crimes in which the state and its agents are the clear perpetrators – but also cases that fall outside the scope of traditionally-defined human rights violations. I focus on *all* cases of violations of the right to physical integrity (also known as the right to life), not only those violations committed by the state. The choice to focus on all cases of homicides and disappearances was theoretically driven by the reasoning described above, but also driven by the realities of violence, especially in Mexico. As I discuss extensively in Chapter Three, the identity of the perpetrators of violence in Mexico between 2006 and 2012 was rarely clear: the vast majority of cases I documented included involvement by both criminals and state agents.³² This choice was also born of necessity: while the data on crime in Mexico is unreliable, there simply does not exist any credible data on the number of human rights violations – cases in which the state is clearly involved - much less the judicial status of these crimes.

Before proceeding, it is also necessary to discuss the term and concept of “victim.” In both Mexico and Colombia, family members of those murdered or disappeared often identify both themselves and their murdered or disappeared loved ones simply as “*víctimas*,” or victims. While the term “victim” has been challenged by some activists,

³² Oaxacan intellectual and organizer Gustavo Esteva uses “*lodo*,” mud, as an analogy to talk about violence in Mexico. For Esteva, the state and organized crime/narcos are no longer separate entities – they have mixed, erasing the independent properties of each, like earth and water turning into mud. This “mud” blurs any clear sense of who is responsible for violence. Source: Author recording of Esteva’s comments during a 9/12/11 forum in Oaxaca, Mexico

scholars³³ and organizations wanting to emphasize the active and empowered role that these family members have taken, the term has been embraced and, I would argue, re-appropriated by many of the family members of the murdered and disappeared. This re-appropriation has become a way of asserting their common identity (regardless of the perpetrator of the crime or the circumstances of the violence perpetrated against their loved one), articulating common demands for justice, and in asserting that they are victims of crimes – as opposed to complicit in the crimes as the government’s dominant narrative claims. Because of this, I also use the term “victim” throughout the dissertation to interchangeably refer to both family members of those murdered or disappeared, as well as those who were themselves murdered or disappeared.

B. Unit of analysis

A judicial case of homicide or disappearance can be organized in several different ways. In both the Mexican and Colombian courts, cases are often initially filed according to an event: if several people are disappeared at one time, for example, these disappearances will be assigned a single case number. A single case may also be brought against a perpetrator who has committed various murders. That is, there may be multiple events and victims all being considered in one case.

As opposed to the aforementioned ways of understanding a “case,” I define a “case” as: one individual who has been the victim of a violation of the right to life. While this is a

³³ See “Look further than my pain: from victim to human rights defender,” (2010) (*Ver más allá de mi dolor: de víctima a defensor de derechos humanos*) by Erick Monterrosas Castrejón, in Beristain, C. M. (2010). *Manual sobre perspectiva psicosocial en la investigación de derechos humanos*. CEJIL.

methodological choice, it is also a political and theoretical one. Returning to political theory, if we regard the relationship between the individual and the state as the foundational one for state legitimacy, the state must be judged on whether it is able to provide justice for every individual victim. If we take the other units of analysis as primary (the violent event; the perpetrator), we remove individuals from the center of our analysis.

I count a case as having judicial advances, then, if there has been some progress in the case of any individual who has been the victim of a violation of the right to life. This may mean that the prosecution of a single, very violent perpetrator shows up as a judicial advance in, for example, 15 separate cases of murder under my organizing schema. That is, it could be argued that my organizing schema could tend to *understate* the levels of impunity because I may count punishment against a single perpetrator multiple times. Using this methodology, I also do not differentiate between the intellectual authors of killings or disappearances and the person or persons who carried out the crimes. This underestimates impunity in that even if the intellectual author is not punished, as is most often the case, the case may be counted as a judicial success if the person who pulled the trigger is sentenced. I also have no way of accounting for the many crimes in which there are many different perpetrators involved. Many disappearances, for example, have a documented chain of custody in which it is evident that various members of the police, military and/or organized crime collaborated in the disappearance of people –

transporting them to several locations before they were disappeared.³⁴ This methodology has no way of counting how many clearly implicated perpetrators were not punished.

C. Most Different Systems Design: Mexico and Colombia

A single research question guides this project: what explains why some cases of murders and disappearances achieve judicial success? To answer this question, I use a multi-level, multi-method research design, which draws on the logic of both nested analysis (Lieberman, 2005) and Most Similar/Different Research Design (Przeworski and Teune, 1970). In the first step in my analysis, I use large-n descriptive judicial statistics to test my first hypothesis, that *organized citizen action makes the provision of justice more likely*. This hypothesis was formed largely while working as a human rights accompanier in Colombia as I noticed that in some cases, organized citizen action was playing an important role in the legal proceedings of homicides and disappearances. I wondered, however, if my observations were anecdotal, or whether they in fact captured systematic patterns in Colombia that were generalizable to a wider range of cases, like Mexico.

To test this hypothesis, I decided to conduct a two-country study. In deciding to do a two-country comparative study, I opted for the benefits of generalizability that a one-country study could not provide, without sacrificing the in-depth data gathering and sub-national analysis that studying more than two countries would limit. I chose to focus on two democracies with relatively weak rule of law that are struggling with high rates of

³⁴ See, for example, the case of Jehú Sepúlveda in Monterrey, Nuevo León. After being pulled over in November, 2010 by the traffic police for parking on the wrong side of the street, he was transferred to the federal police and then the navy, supposedly to check whether he had any outstanding warrants. The navy reported that they released him, and that he then caught a taxi home. He was never seen again.

violence to conduct this analysis, and analyze why, despite very different institutional, historical and political realities, these two countries converge on a common judicial outcome that I call “selective judicial success.”³⁵ My empirical results confirm my hypothesis that organized citizen action makes the provision of justice more likely.

In 2009, as I prepared to begin my research, it was just becoming apparent that the increasing violence in Mexico was not a fleeting trend, but a national crisis that had enveloped several northern states, and was beginning to spread to others as well. This placed Mexico within Latin America’s regional trend of high violence states without a monopoly of violence inside their own borders, giving the region the unfortunate distinction of being the second most violent in the world.³⁶ In 2010, Mexico, despite having the world’s 11th largest population, ranked third in total number of homicides; Colombia, with the world’s 26th largest population, ranked eighth. In terms of homicide rates, as opposed to total numbers of homicides, Mexico and Colombia ranked 18th and 10th, respectively, in the world. These high rates of violence put the issue of justice and punishment front and center in each country’s national political and economic contexts.

³⁵ As noted in Chapter One, I define selective judicial success as follows: certain types of legal cases, in certain localities in certain years, experience a non-random pattern of significantly higher judicial success rates.

³⁶ Southern Africa was the most violent region in the world in 2010. See Appendix 1. These figures are based on original analysis of UNODC data, accessed May 2nd, 2013: <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>. Of 187 countries that provided homicide data to the UN Office of Drugs and Crime in 2008, seven out of ten countries with the highest homicide rates were located in the Americas, and by 2010, the Americas occupied 8 of 10 of the top 10. In 2010 Central America and Mexico surpassed Southern Africa as the region with the most homicides in the world (37 per 100,000). See Appendix I for more information.

In terms of the justice systems in Mexico and Colombia, most international rankings considered the justice systems as relatively equal,³⁷ and the 2010 AmericasBarometer survey demonstrated similarly low levels of citizen trust in the judiciary, though Mexicans reported paying more bribes than Colombians.

Figure 2.2 AmericasBarometer 2010 Survey Data of Mex vs. Col justice systems

	Mexico	Colombia
"No" faith that "the judicial system would punish the guilty" in cases of assault/robbery	36%	21%
Very Low or Low "trust in the justice system,"	24%	17%
A fair trial is very rare or somewhat rare	22%	16%
Of those that have had dealings with the courts, % that have reported having had to "pay a bribe to the courts."	32%	4%

As Mexico became more violent, both scholars and politicians, most famously and controversially Hillary Clinton in 2010, began to discuss whether the "Colombianization of Mexico"³⁸ was a helpful analytical and policymaking framework. While some policymakers made the case for the similarity of these countries due to their problems with violence (Galen, 2005; McCaffrey, 2008), most scholars looking at the two countries focused on how different they were due to their diverging institutional, historical and political contexts. I agree with these scholars, and treat these two countries as most different cases.

³⁷ The Bertelsman ranking system gives Colombia a 6 out of 10 ranking, and Mexico receives a 5, and the Cingranelli Dataset, Howard & Carey's and LaPorta's ranking systems ranks them equally.

³⁸ On September 8th, 2010, Clinton stated that Mexico is "looking more and more like Colombia looked 20 years ago, where the narco-traffickers controlled certain parts of the country." The following day, President Obama disagreed, telling the Spanish-language newspaper La Opinion, "You can't compare what is happening in Mexico with what happened in Colombia." See "Obama, Clinton split on drug war parallels", in the Washington Post, September 10th, 2010, by Anne E. Kornblut and Scott Wilson. <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/09/AR2010090906741.html>

What makes these countries so different? Most clearly, the Colombian government has been fighting an almost 50-year bloody civil war with the leftist FARC³⁹ and other guerilla groups. While Mexico has had state-level conflicts (most notably the Zapatista rebellion since 1994), there has not been the sustained violent conflict that has dominated Colombia. Institutionally, Mexico's federal system and Colombia's unitary system of government mean that lawmaking and the provision of justice look very different in the two countries; in Colombia this power is centralized in the nation's capital, while in Mexico it is dispersed to the state level. Politically, Mexico is in the midst of moving from a one party state with high levels of popular incorporation to a multi-party democracy. Colombia, on the other hand, has been a stable electoral democracy (it has held regular elections and alternated power between different parties since 1958), but it has been dominated by elite interests and has sustained much lower levels of popular incorporation. Finally, while Mexico transitioned from low to high levels of violence during the Calderón administration,⁴⁰ Colombia has maintained high levels of violence – still nearly 50% higher than Mexico - for the past 40 years.

While these differences would allow me to discern whether one factor – organized citizen action – was producing the common outcomes of selective judicial success in each country, in selecting the second country for my study, I needed the countries to be sufficiently similar to be able to generate a meaningful comparison. My scope conditions

³⁹ FARC, in Spanish, stands for *Fuerzas Armadas Revolucionarias de Colombia*, the Revolutionary Armed Forces of Colombia.

⁴⁰ The homicide rate in Mexico almost tripled in five years: from 8.1 to 23.7 murders per 100,000 inhabitants from 2007 to 2011. Source: UNODC.

were that the comparison country needed to be democratic, to be struggling with violence that did not emanate solely from the state, and to have a civil legal system.⁴¹ These scope conditions also indicate the limitations of the generalizability of my findings, and further research will be necessary to determine whether these findings travel to countries with different overarching institutional, historical and cultural contexts.

Once I selected Mexico and Colombia, I made decisions that would allow me to credibly compare the two countries, and to narrow the possible explanations for what was causing changes in the provision of justice. I limited my periods of study to one president's rule: in Mexico under President Felipe Calderón from 2006-2012, and Colombia under Álvaro Uribe from 2002 – 2010. Limiting my years of study to one president's rule in each country controlled for changes in the executive and the personnel in the judicial branch that might affect the provision of justice. I chose to pair Uribe's and Calderón's administrations because both are conservatives with strong law and order orientations who made fighting a violent enemy (in Uribe's case the FARC rebels; in Calderón's the drug cartels) the centerpiece of their domestic policy. Both saw increasing funding for and training of the armed forces – together with generous US aid packages - as a central pillar of this strategy. Both of these administrations also saw similar increases in violence, and both countries experienced pronounced growth in human rights and anti-violence civil society advocates during their administrations. By analyzing overlapping years, I controlled for temporal variation that might influence civil society, state and geo-political conditions.

⁴¹ Other macro similarities between Mexico and Colombia - Spanish colonial histories, Iberian Catholic cultures, a common language - controlled for certain national-level variations in this study.

Figure 2.3 Most-different analysis with two cases (Drawn from Gerring 2008, p.671)

Case Types	x_1 : Variable of Theoretical Interest	Vector of Controls				Y: Outcome of Interest
		x_{2a}	x_{2b}	x_{2c}	x_{2d}	
Countries	Organized Citizen Action in cases of murders/disappearances	Ongoing civil war	System of Gvt: Federal?	History of Procedural Dem	Popular Incorporation	Selective Judicial Success
Mexico	Yes	No	Yes	No	Yes	Yes
Colombia	Yes	Yes	No	Yes	No	Yes

As I generated more fine-grained statistics on the provision of justice over the course of my research, it became clear that, as I had suspected, both Mexico and Colombia converged on a common judicial outcome of selective judicial success, with overall high (more than 90%) rates of unresolved cases, but with certain cases progressing non-randomly in the justice system. That is, these two countries have a common value on the dependent variable. Using both descriptive statistics and ethnographic and interview evidence, and following the inductive logic of most different comparisons, I was able to confirm my hypothesis that the presence of organized citizen action was a key factor in producing selective judicial success in both countries.

D. Most Similar Systems Design: Mexico and Colombia

While my initial findings demonstrated that organized citizen action was important in the provision of justice, they left open the question of what mechanisms and processes

produced this result. Only a minority of cases that are taken up and rigorously advocated for by civil society groups and their allies are investigated by state authorities, and an even smaller number go to trial. What factors influence which “advocated cases” advance in the two justice systems?

To answer this question, I used qualitative evidence, including interviews and ethnography, to look within the universe of cases that entailed some form of organized citizen action. This allowed me to investigate the causal mechanisms that link organized citizen action to the provision of justice. I first conducted a hypothesis-generating most similar comparison, or what Lieberman calls a “model-building small-*n* analysis” of civil society organizations in three neighboring Northern Mexican states, Nuevo León, Coahuila and Chihuahua. The states have a great deal in common: all experienced a sharp increase in violence during the Calderón administration; all have been continuously ruled by the PRI; and all have robust civil society organizations that accept and advocate on behalf of all cases that come to them and fit within their rules and criteria rather than focusing on the litigation of a few paradigmatic cases as many other organizations do. Despite these similarities, however, these organizations achieve very different judicial outcomes. This comparison suggested that different types of civil society groups, which I label activists and advocates, engage in different types of activities and negotiations with governmental and judicial officials, and that these activities produce divergent results: the presence of both activists and advocates leads to comparatively high relative judicial success; the presence of only advocates leads to medium relative judicial success, and the presence of only activists leads to comparatively low levels of relative judicial success.

To test this hypothesis, I next conduct two most similar paired comparisons, what Lieberman calls “model-testing small-*n* analysis.”

Figure 2.4 Most Similar Analyses: Hypothesis-Generating and Hypothesis-testing
(Drawn from Gerring 2008, p.669)

Figure 2.4 Most Similar Analyses: Hypothesis-Generating and Hypothesis-testing

Case Types	x_1 : Variable of Theoretical Interest	Vector of Controls			Y: Outcome of Interest	Possibly important difference
		x_{2a}	x_{2b}	x_{2c}		
Hypothesis-generating: 3 states in Mexico						
	Presence of Activist and Advocate Groups	Increase in drug-related violence in 2008	Ruled continuously by PRI for more than 10 years	Geographic Location: Northern Mexico	Relative Judicial Success	Involvement of International Actors
Nuevo León	No: Advocates Only	Yes	Yes	Yes	Med	Moderate
Coahuila	No: Activists Only	Yes	Yes	Yes	Low	Moderate
Chihuahua	Yes	Yes	Yes	Yes	High	High
Hypothesis-testing 1: 2 cities in one Mexican state						
	Presence of Activist and Advocate Groups	Involvement of International Actors	Same governmental / judicial actors	Identical justice reforms	Relative Judicial Success	Located in Capital City?
Juárez, Chih	No: Activists Only	High(est)	Yes	Yes	Low	No
Chihuahua, Chih	Yes	High	Yes	Yes	High	Yes
Hypothesis-testing 2: 2009 vs. 2013, Extrajudicial Executions in Colombia						
	Presence of Activist and Advocate Groups	Presence of International Human Rights Advocates	Comparative Impunity in Other Types of Murders/Disappearances	Threats to investigators, judges	Relative Judicial Success	President
Colombia 2009	No	Yes	Yes	Yes	Low	Uribe
Colombia 2013	Yes	Yes	Yes	Yes	High	Santos

The first hypothesis-testing paired comparison was a sub-state level paired comparison that I conducted within the northern Mexican state of Chihuahua. While most similar comparisons ideally compare quite similar cases, in practice most similar comparisons often contain differences that must be studied to ensure they are not driving the outcome. There is an argument to be made that Chihuahua differs from Coahuila and Nuevo León in two ways: it is a more violent state, and has received significantly more international attention than either of the two other states. Because it is also the state in my hypothesis-generating exercise with the strongest relative provision of justice, it was important to test whether international involvement and higher rates of violence, rather than the presence of activists and advocates, was driving these stronger judicial outcomes.

Chihuahua has two large economically and politically important cities, Chihuahua City and Juárez. While similar in nearly every other way that could reasonably be expected to affect judicial outcomes, there has been more international attention focused on Juárez than Chihuahua City.⁴² Therefore, if international activism was driving the positive judicial outcomes in the state of Chihuahua, we would expect there to be even greater judicial success in Juárez than in Chihuahua City. As I detail in Chapter Four, I find that, to the contrary, civil society groups in Juárez have experienced low levels of relative judicial success, while organizations in Chihuahua City have experienced the most positive results of any group I observed.

⁴² As I discuss in Chapter Four, this international focus on Juárez is due mainly to the well-publicized killings of women, or femicides. Juárez also sits on the US border, with El Paso on the other side, and is therefore more visible and accessible to US-based activists than Chihuahua City.

Complicating an ideal most similar comparison is the fact that Chihuahua City is the capital of Chihuahua – and hence is the judicial decision-making site. I do think that proximity to the judicial decision-making site positively correlates with the provision of justice. However, proximity to judicial decision-making is perhaps best thought of as an intervening variable in explaining why advocates have emerged in Chihuahua City and not in Juárez. We know that proximity to the judicial decision-making site is not, by itself, causally sufficient, since the groups in the first analysis (of Nuevo León and Coahuila) were both based in their state’s capitals.

For my second paired comparison, I focus on the judicial results and configuration of activists and advocates in Colombia in 2009 and 2013. In 2009, cases of extrajudicial killings, like the wider universe of cases of disappearances and homicides, had a relatively low level of justice provision. By 2013, cases of extrajudicial killings had more than twice as much judicial success as the wider universe of cases. My hypothesis from the Mexican cases would suggest that I should find advocates and activists present in 2013, but not in 2009. I indeed found that advocates and activists were present in 2013, while in 2009 (similar to Juárez), there were many vocal activists but advocates were only beginning to emerge. Again complicating an ideal version of a most-similar comparison was the fact that in 2010, the President of Colombia changed from hardline Alvaro Uribe to more moderate Juan Manuel Santos. While I do think Santos being president has facilitated the judicial success of these cases, we would expect that if Santos was determinative in the provision of justice that all cases of homicides and disappearances, not just extrajudicial killings, would experience increased judicial

success – something that hasn't happened. Further, if this was the case, process tracing should have revealed the importance of the change in presidency. On the contrary, I find that the key change between 2009 and 2013 is the evolution of the UN Office of the High Commissioner for Human Rights (UNHCHR) into an effective advocate. These three analytical exercises in hypothesis generating and testing provide strong empirical support for the importance of “activists” and advocates” in the provision of justice in cases of disappearances and homicides in Mexico and Colombia.

III. Operationalizing Key Variables

A. Dependent Variable: Judicial Outcomes

Evaluating these hypotheses requires a clear conceptualization of my dependent variable, judicial outcomes. While I include discussions of data procurement and analysis to Appendices A and B, it is useful to briefly introduce the way in which I operationalize this key variable. Throughout this dissertation I interpret judicial outcomes from Colombia and Mexico in a single judicial framework. Given the heterogeneity of the judicial systems between states and countries, the obvious drawback to a simple classification system is its simplicity: we lose much of the nuance that understanding each stage in each process gives us. With this loss of complexity, we risk conflating judicial stages that are in fact quite different. I argue, however, that what we lose in complexity we gain in being able to compare these judicial processes.

I utilize the following schema to classify the judicial stages of cases in Mexico's and Colombia's judicial systems. It is meant to be broad and simple, with the hope that it can

also be applied to cases in other national contexts. This scale regards judicial processes and outcomes as fundamentally linear, or in other words as a continuous variable. It is elaborated on Appendix B.

Judicial Results Scale

Stage 1: Reporting and documenting of the crime
Stage 2: Concrete Investigative advances
Stage 3: Indictment
Stage 4: Judgment
Stage 5: Sentence

B. Key Independent Variable: Organized Citizen Action

I developed the categories of “activists” and “advocates” to characterize the organized citizen action I witnessed during my fieldwork based on observing the dynamics between civil society organizations, social movements and the state over the course of work and research done during a six-year period. My work as a human rights accompanier in Colombia with the international NGO the Fellowship of Reconciliation during 2006 and 2007 exposed me to a broad range of Colombian civil society groups and state officials. Since part of my job was to assess the dynamics between these groups, this proved to be invaluable grounding and experience for my research. During my two and a half years of fieldwork for my dissertation, I spent the plurality of my time in the field conducting ethnographic work with two organizations: the MPJD, the *Movimiento por la Paz con Justicia y Dignidad*, the Movement for Peace with Justice and Dignity, the national Mexican movement of victims of violence; and CADHAC, *Ciudadanos en Apoyo de los*

Derechos Humanos Asociación Civil, Citizens in Support of Human Rights, Civil Association, the primary human rights NGO in Monterrey, Nuevo León. I spent a year (September 2011 – September 2012) engaged in embedded ethnography with the MPJD, attending a total of 27 weekly plenary meetings and an additional 92 MPJD-sponsored events, and spent a total of more than two months with CADHAC. I also spent nearly six months in Colombia. I traveled often, attending events in 16 of Mexico's 32 states, and taking 41 flights associated with my research between August 2010 and July of 2013. Over the course of my research I spoke with the representatives of 96 different social movement organizations or NGOs in Mexico and Colombia, documented 388 distinct events,⁴³ and recorded almost 8,000 hours of ethnographic fieldwork (including, for example, all day conferences, interviews, meetings of the MPJD).

During the course of this ethnographic work, I got to know leaders, lawyers and participants in nearly every group mentioned in the Mexico-focused chapters, and talked with them both informally and in semi-structured interviews.⁴⁴ Additionally, before the emergence of the MPJD, I attended several conferences of the RedTDT, the *Red de todos los Derechos para Todos*, the Network of All Rights for All People, the national coalition of human rights organizations in Mexico. I was allowed to observe the meetings of many organizations, and perhaps most influential for me in thinking about activists/advocates was the ways in which these groups spoke of the state, and their goals and strategies vis-

⁴³ I count each social movement mobilization, interview, meeting, conference, and recorded conversation as a distinct event.

⁴⁴ In Coahuila and Chihuahua, I rely more on semi-structured interviews with organization leaders. I also used third-party histories when appropriate, most prominently in order to understand the long history of organizing against femicides, or the killing of women, in the state of Chihuahua – a phenomenon well-documented by scholars of transnational activism and feminism.

à-vis interactions with the state. There were often times internal splits within civil society organizations, with more radical members proposing to use more confrontational tactics, and more reform-minded members arguing for dialogue with the state. I also noticed that other external factors which I thought could be driving judicial success – the selection of cases, variation in local laws – were not emerging as significant explanatory factors. As I began to develop the idea that it was actually a difference internal to the organized groups of citizens that could be driving judicial success, I went back to several of the leaders I had interviewed previously and ran by them the basic hypothesis of activists/advocates. When this found resonance with them, I moved on to the hypothesis testing.

IV. Conclusion

In this chapter I first discuss central concepts in my work, including “human rights” and “victims,” the definition of a “case” as my central unit of analysis, and finally the logic behind the most similar and most different case analysis I conduct. I move on to briefly introduce how I operationalized and gathered data relevant to my key variables. I discuss the mostly ethnographic fieldwork I conducted which led me to develop the concepts of activists and advocates.

Studying judicial outcomes in violent democracies is, in many ways, a fraught enterprise. State-generated data is usually difficult to obtain, and social movement organizations are often secretive about their own work. By using a rigorous inductive research design and conducting extensive ethnographic fieldwork, my intention is that this work employs

methodologies that make further study of this important but complex subject area increasingly possible.

Chapter Three

A Tale of Two Mexicos: State Violence and Organized Citizen Action

I. Introduction

Mexico has never been like its neighbors. The military dictatorships and accompanying campaigns of enforced disappearances, political kidnappings and murders, and generalized repression that characterized much of Latin America in the 1970s and 1980s were conspicuously absent in Mexico.

The scholarly explanations for this comparative calm and order split into roughly two camps, with traditional explanations focusing on a consolidated corporatist state with a strong presidency, and revisionist historians focusing on the considerable power wielded by state-level politicians, and their successful establishment of informal arrangements with powerful local forces in order to maintain order. Scholars in both camps cite the ways in which violence was used by the presidency and the ruling party, the Revolutionary Institutional Party (PRI),⁴⁵ or alternately the governors and local political bosses, to gain and enforce power.

While Mexicans' experience with state-sponsored violence is certainly less than that of other countries in the region, I argue that the historical patterns of state-sponsored violence that did emerge are key to understanding citizens' reactions to the generalized

⁴⁵ It was originally called the National Revolution Party in 1929, before switching its name to the Part of the Mexican Revolution in the 1930s, and the PRI in 1946.

violence in Mexico after 2006. For this reason, in this chapter I focus on the different ways that Mexican citizens experienced and reacted to state violence in the twentieth and twenty-first centuries. I argue that the most visible and incendiary use of violence against Mexican citizens was by the federal government in Mexico City and several other states at the center of the Dirty War, and that this spawned the creation of the Mexican human rights movement. Human rights activists responded to this centrally organized violence by adopting international human rights frameworks that regard the state as a coherent actor with a presumed monopoly of violence that can and should be held responsible for all violence within its borders.

Parallel to this experience with centrally coordinated violence was the experience of low-level violence used by governors and local officials to maintain order in nearly every one of Mexico's 32 states. This locally controlled violence taught citizens that the commission of violence and the state itself were fractured entities, ultimately leading to the rise of local citizen movements who intuitively understood that they could find allies within the state. These local groups coalesced in 2011 with the emergence of the *Movimiento por la Paz con Justicia y Dignidad* (movement for Peace with Justice and Dignity). This chapter contributes to our understanding of how the Mexican state uses violence by placing the federal/local divide at the center of our understanding, and tracing how this divide has influenced the beliefs and actions of organized citizens.

II. The Evolution of State Violence in Mexico

A. PRI Heyday: *Presidencia Imperial* or Persistent Local/State Power?

To many early political scientists, Mexico appeared to be the perfect dictatorship (Scott 1964; Pye and Verba 1965, Huntington and Moore 1970). They regarded the Mexican Revolution and the rise of Mexico's ruling party, the PRI in 1929, which ruled until 2000 as a corporatist party that incorporated labor, peasant, popular and military interests, as having kept violence and unrest at bay:

“Flattering comparisons were made with the disorder and stagnation that characterized other Latin American countries, and the persistent economic inequalities and social injustices in Mexico tended to be downplayed with references to the ‘incomplete’ or ‘ongoing’ nature of the Mexican revolution” (Hellman 1978, v).

Dominant scholarly literatures have attributed Mexico's this pre-1980s comparative peace and stability to a strong presidency⁴⁶ (Dresser 2003; Krauze 1977; Garrido 1989; Carpizo 1978) and ruling party that were able to consolidate power after post-revolutionary rebellions through their corporatist structure. Under this view, the Mexican president presided over a vertical, coherent and strong state from the end of the 1940s until democratization started in the 1980s in which governors were completely subordinated to the president, largely because they had no means of generating their own capital and had to depend on the president for funds. Local caudillos were kept in check by the relative strength of the federal forces together with the considerable coercive power of the president. The president controlled both the purse strings and tenure of the

⁴⁶ Dresser (2002) and Beer (2012) refer to this system of governance as a hyper-presidentialist regime “in which presidents used unwritten norms to control the legislature, the judiciary, and state and local governments” (Beer, 2012). Scholars have also referred to these unwritten norms as “meta-constitutional powers” (Dresser 2002); and the “presidencia imperial” (Krauze 1977).

governors, and according to Hernández (2008) between 1946 and 2000, 70 out of 252 governors were removed by the president, around 25%.

Newer, revisionist scholarship (Hernández 2008; Gillingham, 2014) has questioned this understanding, arguing that governors and other state-level officials maintained coercive power in their territory during this period through tacit agreements with the president: if they provided stability and order, they would be left alone. This revisionist strain tends to recognize that the Mexican military has played a far more active and violent role than the “perfect dictatorship” scholars would like to think, including “military action against rebellious strongmen in the 1920s and 1930s and against electoral opposition in the 1940s and military and secret police repression of labor movements during the 1940s and 1950s, students in the 1960s, and rural rebellions during the entire period” (Pansters 2012, 15).

Revisionist scholarship has also emphasized that Mexico in the 1940s and 1950s was much more violent than others have recognized (Migdal 1988): it was a chaotic state in which control of the use of force was in the hands of local caudillos, or political and economic heavyweights. While the centralization of the federal state in the 1950s subdued some of these local strongmen, this scholarship emphasizes that even in the heyday of PRI presidential power, governors and other local political bosses exercised autonomy and real power, and that they often wielded this power through violence.

Though the army was involved in the violence committed throughout the Mexican states, local squadrons operated largely according to the commands and interests of local coalitions of power (Rath 2013).

B. The fall of PRI hegemony

The view of the PRI as the perfect dictatorship became more difficult to sustain after the repression of student protests and the 1968 Tlateloco massacre and the ensuing state-sponsored terror of the Dirty War. This repression highlighted the repressive power of the presidency and the PRI, and by the 1980s, “it had become a standard view [among social scientists] that the Mexican state – or in naively personalized form, the Mexican president – enjoyed pervasive and untrammelled power” (Knight 2002, 212).

This view of the Mexican state is especially fitting if one looks into The Dirty War.

Reporting on a 2006 leaked internal study of the Fox administration that later was edited and issued by the National Security Archive, the New York Times summarized the Dirty War as follows:

The secret report prepared by a special prosecutor's office says the Mexican military carried out a "genocide plan" of kidnapping, torturing and killing hundreds of suspected subversives in the southern state of Guerrero during the so-called dirty war, from the late 1960's to the early 1980's... For the first time [it] provides names of military officers and units involved in destroying entire villages that the government suspected of serving as base camps for the rebel leader Lucio Cabañas.

In those towns, soldiers rounded up all the men and boys, executed some on the spot and detained others, and then used violence, including rape, to drive the rest of the people away, the report says. Most of those detained suffered severe torture, including beatings, electric shock and being forced to drink gasoline, at military installations that were operated like "concentration camps."

‘With this operation, a state policy was established in which all the authorities connected to the army — the president, ministers of state, and the presidential guard, commanders of the military regions in Guerrero, and officers and troops in their command — participated in the violations of human rights with the justification of pursuing a bad fugitive,’ the report says. ‘Such an open counter-

guerrilla strategy could not have been possible without the explicit consent and approval of the president.’⁴⁷

According to the official report eventually issued by the Mexican government, this campaign resulted in “645 disappearances, 99 extrajudicial executions, and more than two thousand cases of torture, among other human rights violations documented.”⁴⁸

This view of a powerful and coherent federal state began to fade in the 1980s and 1990s, however, as the Mexican State began to lose its grip on power. Illicit drug trafficking and interdiction programs had existed in Mexico for decades: “well into the 1980s, many current top cartel operatives—virtually all of them with roots in Sinaloa—operated largely undisturbed within a loosely knit alliance that controlled different commissions, or plazas, for smuggling drugs into the United States and benefited from a highly permissive environment” (Shirk 2011, 9). In the late 1980s, however, the dynamics that had enabled the tacit alliances and comparatively peaceful and mutually beneficial relationships between DTOs and state officials shifted.

The US demand for drugs began to rise with the counter-culture movement of the 1960s, and this demand spurred the success and profits of Colombian DTOs in the 1970s and 1980s (Astorga and Shirk, 2010). As the Colombian DTOs began to decline due to a combination of US and Colombian interdiction efforts and internal disputes, Mexican DTOs rose to fill the ever-increasing US demand, and “by 1991, Mexico reportedly accounted for an estimated 300-350 tons of cocaine and roughly a third of all heroin and

⁴⁷ “Report on Mexican ‘Dirty War’ Details Abuse by Ginger Thompson.” February 27, 2006
<http://www.nytimes.com/2006/02/27/international/americas/27mexico.html?pagewanted=all>

⁴⁸ Quote from National Security Archive website. The entire report can be found in Spanish at this address:
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB209/#informe>

marijuana imported into the United States” (ibid, 5, drawing from Gerth 1988 and Miller 1991). The rise in Mexican DTOs, paired with the PRI’s decreasing ability to ensure electoral hegemony, eroded the power of federal forces. Struggles for control of these profits led to increased local violence in the form of political assassinations and unpunished killings of anyone who interfered with the increasingly powerful DTOs (Pansters 2012, 16-17).

The timing of this rise in drug profits coincided with a change in political dynamics. A series of economic crises, state governmental reforms focused on efficiency and streamlining, and electoral losses sustained by the PRI resulted in a decentralization of economic resources and political power, and resulted in the presidency not only losing control of state governments, but of the illicit trade markets as well. The dual trends of democratization and the rise of international drug trafficking organizations (DTOs) meant that the federal government’s power was waning – and as the power of the federal government waned, state power rose. A spate of historical scholarship has provided these thick, local descriptions of the ongoing power of local strongmen and politicians, called *caudillista* or *caciquista* accounts (Knight and Pansters, 2005). Together these studies paint a picture of a disaggregated state with local, competing actors, in which power is “personal, informal, to a degree reciprocal, and resistant to formal laws and regulations” (ibid, 3). The constant in these locally focused accounts of power and violence are the consistent atrophied state of local institutions. At no time during the previous periods of greater federal power, were the local institutions – the police, the courts, legislatures – invested with any real power to regulate contentious social or economic relations. Local

judiciaries, for example, usually develop by mediating local conflicts. But in Mexico, there were other mechanisms to do this - local *caciques* provided the conflict resolution. This left local institutions to be little more than shells through the early 2000s.

C. Post-2006: Calderón and the War on Drugs

When Felipe Calderón took office in December 2006, he inherited a Mexican state that he perceived as critically threatened by DTOs (Beittel 2009, 6; Bailey 2014, 1). DTOs had grown to be a significant economic force. With estimates of profits of Mexico's the drug trade reaching \$30 billion per year, which is three to four percent of Mexican GDP, and employing more than half a million people (Shirk 2011), DTOs had the power to buy off government officials, confront police, procure sophisticated weapons to defend their economic interests, and absorb significant economic and security setbacks (Bailey 2014, 2).

How had they become so profitable and powerful? As transit routes were disrupted in Colombia and the Caribbean by US-led interdiction efforts, drug routes shifted to land, making Mexico the principal transit route between drug producing countries in Latin America and the lucrative US market (Lee 2014; Carter 2013; Beittel, 2013). Others scholars explain DTO strength by focusing on the inability of the weak justice system to dismantle the control of illicit markets by a combination of DTOs and state officials. As Shirk 2011 writes: "Mexico's centralized, single-party political system enabled DTOs to create a system-wide network of corruption that ensured distribution rights, market access, and even official government protection for drug traffickers in exchange for

lucrative bribes" (9). Bailey (2014, 9) likewise focuses on structural issues like poverty and institutional weakness that lead to what he terms the "security trap," in which "crime, violence, corruption, and impunity become mutually reinforcing in civil society, state, and regime, and override efforts to build ethical democratic governance."

Regardless of what strengthened the DTOs, Calderón perceived what many pundits and politicians alike had also perceived: that organized crime, especially drug traffickers, had never been more powerful, and that they were eroding the power and legitimacy of the Mexican state, particularly the federal forces, even further.

The Calderón team argued that past administrations had not effectively confronted criminal organizations and that the threat had reached a tipping point in perhaps six or so of Mexico's 32 states. Armed criminal groups were overtly controlling pieces of national territory. If the government did not respond vigorously, the problems would escalate and the national capital would be threatened. Given the weakness—if not complicity—of police forces and intelligence services, the government needed to use the military on a short-term basis (Bailey 2014, 5).

To make matters worse, Calderón was faced with a narrow electoral victory – under one percent - and intense post-electoral dispute over whether he was the "Legitimate President," a Congress in which he did not have a majority and severely limited his abilities to legislate effectively, and with few international political issues could be used to mobilize legislative or popular support (ibid.). One of the few things he could do, however, was control the army. Given these circumstances, Calderón decided to unleash the army on DTOs in Mexico. Between 2006 and 2009, he deployed approximately 45,000 military and 5,000 federal police throughout Mexico (Felbab-Brown, 2009). He decided to start by targeting the heads of the different drug cartels. This strategy would come to be known as the kingpin or *descabezando*, decapitating, these drug cartels

(Kristlik, 2013).

What were the results of this war and why? While exact numbers do not exist, most analysts agree that there were at least 60,000 homicides related to organized crime since 2006 (Beittel 2013). Many point to Calderón's targeting of DTO's as the trigger that ignited this dramatic increase in homicides,⁴⁹ and most agree that the results of the war on drug cartels has been the creation of a many-headed hydra.⁵⁰ That is, there has been a reorganization and reshuffling of the cartels with two principal cartels left standing: the Sinaloa cartel, which has historically formed stable, peaceful relationships with the government, and the Zetas cartel, renowned for their brutality (ibid.).

Snyder and Duran (2009) attribute this increase in violence not to the drug trade itself – but to the breakdown of the state-sponsored protection rackets, which they define as “informal institutions through which public officials refrain from enforcing the law or, alternatively, enforce it selectively against the rivals of a criminal organization, in exchange for a share of the profits generated by the organization.” To them, well-meaning rule of law reforms, like the reform of the Mexico Attorney General's office, may have the unintended consequence of destabilizing a peaceful balance between public officials and drug traffickers.

⁴⁹ “The implementation of a full-fledged campaign against drug cartels unleashed a Hobbesian war of all against all” (Osorio, 2013); “Mexico is violent because its illegal drug industry evolved from one in which drug traffic organizations (DTOs) were stable oligopolies, as most illegal industries are – to one in which DTOs want to compete between each other” (Rios, 2011).

⁵⁰ Chris Carter (2013) “Beheading the Hydra.” Online article published about Beatriz Magaloni's talk at the Center for Latin American Studies, UC Berkeley:
<http://clas.berkeley.edu/sites/default/files/shared/docs/tertiary/BRLASFall2013-Magaloni.pdf>

III. 1980s – 2006: Historical Context of Violence and Human Rights Activism in Mexico

As the dynamics of violence shifted throughout Mexico during the Calderón administration, the Mexican people likewise changed their understandings of the nature of the state after 2006. In order to understand these post-2006 shifts, we must first understand the political, organizational, and ideational context in which these changes occurred.

A. The birth of the Human Rights Movement: Federal Government as Perpetrator

The network of human rights organizations that emerged in the late 1980s and early 1990s in Mexico was a direct response to Mexico's Dirty War. An unexpected event, however, the 1985 earthquake in Mexico City, would prove to be a critical juncture for Mexican human rights organizations. The earthquake, which destroyed most of downtown Mexico City and killed more than 10,000 people, was a watershed moment for the growth of human rights organizations in Mexico as it had been in other countries previously.⁵¹ The unprecedented demonstration of state incompetence and corruption, paired with the comparative competence shown by international and domestic NGOs, transformed the imagined possibilities of non-state political action (Keck and Sikkink 1998: 112; Jesús Cantú interview, 2013).

While smaller human rights organizations emerged in the 1970s,⁵² human rights NGOs

⁵¹ Most notably, the 1972 earthquake in Nicaragua was the beginning of the end for the Somoza regime in Nicaragua. Thanks to Matthew Evangelista for pointing out the parallel.

⁵² Fox and Hernández (1992) cite the Mother's Committee, founded in 1978, and the National Front

proliferated in the post-earthquake context: in 1984, there were only four human rights NGOs, by 1991, there were sixty, and by 1993, two hundred (Fox and Hernandez, 1992; Keck and Sikkink, 1998). The groups that would come to dominate Mexico's human rights community were born in the mid-1980s. The Mexican Academy for Human Rights, established in 1984, and the closely linked Mexican Commission for the Promotion and Defense of Human Rights (CMDPDH) in 1989, would come to serve as bridges between academia, the state and international institutions. The leading figures from these organizations would rotate between international institutions, including the UN, OAS, and foundations, and leading human rights posts within the Fox and Calderón administrations.⁵³ Around the same time, organizations explicitly linked to the Jesuits and liberation theology were also established. In Mexico City, the Center for Human Rights "Miguel Agustín pro Juárez" (Centro ProDH) was founded in 1988 by the Jesuits, and the Fray Francisco de Vitoria Center was founded by Father Miguel Concha in 1984. Outside of Mexico City, organizations formed to address the human rights concerns of indigenous Mexican communities. In 1989 Samuel Ruiz, the Catholic Bishop in Chiapas, founded the Fray Bartolomé de las Casas Center for Human Rights (FrayBa), and in 1994 Abel Barrera Hernández, a local anthropologist, founded the Tlachinollan Human Rights

Against Repression (FNCR) as the earliest Mexican human rights organization, while they locate the first NGOs as social welfare-oriented organizations coming out of the Catholic church (178). Fox and Hernandez refer to the following sources for further information on early Mexican human rights organizations: *Human Rights in Mexico: A Policy of Impunity* (New York: America's Watch, June, 1990); Miguel Concha, "Las violaciones a los derechos humanos individuales en México: 1971-1986," in Pablo Bonzález Casanova and Jorge Cadena Roa, eds., *Primer Informe sobre la Democracia: México 1988* (Mexico City: Siglo XXI/UNAM, 1988); *Mexico: Human Rights in Rural Areas* (London: Amnesty International, 1986); and *Mexico: Torture with Impunity* (New York: Amnesty International, 1991).

⁵³ Marielaire Acosta, the lead figure in both the Mexican Academy and CMDPDH, would be later join the Fox administration as the Sub-secretary of Human Rights and Democracy. Later, Juan Carlos Gutierrez, a Colombian-born lawyer who also led CMDPDH, would be instrumental in crafting the legislation establishing the accusatory justice system, and he would later join the Calderón administration within the Secretariat of Governance (SEGOB), as the head of the Unit for Promotion and Defense of Human Rights.

Center of the Mountain (Centro de Derechos Humanos de la Montaña “Tlachinollan”).

All of these organizations, it should be explicitly noted, formed in states with direct experiences of federally sanctioned violence and repression.

These academic and religiously affiliated human rights organizations joined together to form Mexico’s largest human rights network, the RedTDT, the Network of All Rights for All People, in 1989. One of their first collective projects was to independently document state-perpetrated abuses committed during the Dirty War, and they quickly published the names of approximately 1,200 people that had been disappeared in the 1970s and early 1980s. The RedTDT, which was initially housed together with Centro ProDH and is now housed in SeraPaz,⁵⁴ currently has 74 member organizations in 20 states. Despite being the largest network of human rights organizations in Mexico, it emerged at a comparatively late time and with less visibility than other human rights networks in the region.⁵⁵ Though the Mexican human rights community continues to struggle with coordinating and standardizing the way it documents human rights abuses, most members of the RedTDT were founded with, and continue to have, a classic human rights frame. In this paradigm, the Mexican government – which is conceived of as only the federal government - is seen as the sole perpetrator of human rights abuses, and as such is the

⁵⁴ SeraPaz grew out of CONAI, the *Comisión Nacional de Intermediación*, which is closely linked to FrayBa and best known for its work facilitating the San Andrés Accords of 1996 between the EZLN and the Mexican government. These accords outlined the rights of indigenous people in Mexico and were agreed to by these communities, and are largely viewed as having been violated by the Zedillo administration. SeraPaz plays a facilitative role with many human rights organizations, and was the physical location of the MPJD plenary sessions from its founding through 2013.

⁵⁵ This was due largely to the Mexican state’s pro-human rights rhetoric and civil society’s focus on promoting free and fair elections (Keck and Sikkink 1998; Solórzano interview, 2010; Cantú interview, 2013).

target to be held responsible for improving human rights.⁵⁶

Frey 2013 argues that these early human rights organizations – specifically CMDPDH, Centro ProDH, Tlachinollan, FrayBa and Tlachinollan - would come to be gatekeeper organizations, with the “power to certify new human rights claims” (Bob, 2010; Frey, 2013). Their gatekeeper status is certified in various ways: most have consultative status with the United Nations,⁵⁷ they receive the majority of international funding targeted towards improving human rights in Mexico, principally from the Ford and MacArthur Foundations, and are looked to by the international community, including the US government, as the go-to organizations to articulate the human rights situation in Mexico.⁵⁸ Their status of gatekeepers would become problematic after 2006, as the locus of violence shifted away from federal perpetrators and towards the more diffuse local actors.

B. Divides Within the Human Rights Activist Community

Despite the fairly coherent frame that human rights organizations adopted prior to 2006, their opinions on the appropriate modes of contention – the role of litigation, contentious action, intra-network collaboration, and documenting human rights claims – varied

⁵⁶ There is regional variation among the member organizations mainly along the lines of whether groups focus on civil and political rights or social, economic and cultural rights. With the AIDS epidemic, the rise of LGBTQ and environmental movements, the rights foci of the member groups of the RedTDT expanded to include these new social concerns.

⁵⁷ Centro ProDH, Tlachinollan, la Red TDT, and the CMDPDH all have consultative status with the UN. <http://esango.un.org/civilsociety/displayAdvancedSearch.do?method=reddefine&ngoFlag=>, accessed 6/21/14

⁵⁸ In wikileaks cable from September 24th, 2009, entitled “EMBASSY ENGAGES CIVIL SOCIETY ON HUMAN RIGHTS PRESAGING FUTURE PARTNERSHIP,” the US Embassy called together “representatives from Mexico’s leading human rights non-governmental organizations (NGOs)” including: Tlachinollan, FUNDAR, CMDPDH, RedTDT, FrayBa, Fray Vitoria and ProDH.

significantly. While most saw a coherent federal state, they differed in strategic evaluations of how to confront the state. Some organizations, often those most directly touched by repression at the hands of the feds, saw the Mexican state as a terrorist state incapable of reform, and explicitly or implicitly believed that legal reforms and victories in specific judicial cases are bandages at best, and counter-productive examples of false consciousness at worst. FrayBa, a prominent member of the network of pro-Zapatista NGOS, regards the state as fundamentally corrupt and incapable of substantive reform. A staff member of FrayBa summarized the organization's stance on the provision of justice in a 2011 interview as follows:

Our goal is not to win cases: our goal is to prevent the state from hurting social movement leaders, because this causes a weakening of the movement... We try to get the leaders out of jail, and to have a strong political presence so that nobody interferes with us. But we consider this a political, not judicial, intervention... In the coming year, we will report two cases [of harassment of social leaders], in cases that have all the evidence you would need [to successfully prosecute the case]. We're doing it really to establish that the justice system still doesn't really work. We don't have any hope that these cases will have "favorable" results.

Of course, the judicial statistics will improve a little with the coming [judicial] reforms, but this is because capitalism needs certain demonstrations like this - but nothing will change. We do not want to make our successes dependent in any way on the state. We want to strengthen the autonomy of the communities.

For FrayBa, then, strengthening the provision of justice is not only not a priority, but it may undermine the achievement of more important goals. This perspective will become particularly important in Chapter Four when I discuss FUUNDEC, the organization of advocating on behalf of disappeared people in Coahuila, which is led by a community organizer trained at FrayBa.

Comité Cerezo similarly sees a coherent strategy behind state-perpetrated violence, but chooses a very different strategy to respond. The Comité, a small human rights group founded by brothers and their allies who had been held as political prisoners and tortured in 2001, focuses on revealing the true nature of the Mexican state through publicly documenting state-perpetrated human rights abuses. Taking their cue from Colombian and other South American organizations, the Comité has pushed other members of the RedTDT to publicly document the case of state-perpetrated human rights abuses. They have had relatively minimal buy-in however, and have documented a relatively small number of cases.⁵⁹

Most organizations of the RedTDT, however, tend to view the Mexican state as flawed but reformable, and accordingly their mission as fundamentally reformist. Their understanding of the state and violence is in many ways similar to FrayBa and Comité Cerezo in that their focus is almost exclusively on federal forces and institutions, to the exclusion of thinking about local dynamics of violence. They differ, however, in their view of what is to be done about federally-sponsored violence. As Mexico's Constitutional Court has continued to evolve and professionalize (see Ocantos, 2012), many see litigation in Mexico's high court as a central strategy to reforming the federal bureaucracy and use of force. Many of these groups report that they conceptualize litigation as a way to leverage institutional change, and its most passionate and articulate adherents came out of the CMDPDH and Centro ProDh. A cohort of young lawyers working at Centro ProDH in the early 2000s became convinced that they could

⁵⁹ Comité Cerezo documented 38 politically motivated enforced disappearances between January 2011 and May 2012 (PBI 2013, 35).

accomplish what lawmakers hadn't been able to through litigation. They sought to establish legal precedents and push the state to reform the military justice system. These lawyers articulated two separate but related strategies: "integrated defense" and "strategic litigation." Integrated defense (*defensa integral*) refers to the practice of exhausting litigation options (beginning in domestic courts, and continuing onto international courts), and at the same time applying political pressure for a positive judicial outcome primarily through media strategies, including close and extensive collaboration with international actors. "Strategic litigation" refers to the practice of litigating cases that are seen as strategic based on what would be accomplished if the case were won. These cases, often referred to as paradigmatic cases, are often considered to represent a category of case that if they had a successful result, would establish important legal precedent. These young lawyers went on to work in state-based human rights organizations involved in the RedTDT, including Tlachinollan in Guerrero, Indignación in the Yucatán peninsula, as well as important international funding agencies and the offices of the UN High Commissioner for Human Rights. Integrated defense and strategic litigation became the predominant strategies among these reform-minded organizations during the 2000s.

These approaches resulted in several significant judicial victories. Most important was the Inter-American Court finding in the case of Rosendo Radilla. Radilla was a community leader in Atoya de Alvarez, a small town in the state of Guerrero.⁶⁰ He was

⁶⁰ Litigating within the IACoHR has been an important strategy for these organizations, but one which is seldom employed because of the lengthy requirements for getting a case admitted. There have only been six judgments against the Mexican state for human rights abuses, and cautionary protective measures have

disappeared at a military checkpoint during Mexico's dirty war in August of 1974. This small town was at the center of state-perpetrated violence during Mexico's this time, and because of these dangerous conditions, Radilla's family did not report his disappearance until 1990.⁶¹ When they did formally report his disappearance, they reported it to the Mexican National Human Rights Commission (NHRC), a newly founded Mexican state entity charged with taking complaints of illegal activities by state agents, but without the power to pursue legal action. Central to the case was the issue of whether the accused members of the military should have their cases tried in civilian or military courts.

The Radilla case is instructive in several ways. First, it showcases the time and resources necessary to pursue this reform strategy. The NHRC took 11 years to issue a non-binding recommendation in favor of Radilla, and the team of CMDPDH lawyers that took on this case accompanied it through the Mexican legal system for more than ten years.⁶² The human rights organizations discussed in this section would continue this slow, lawyer-intensive and selective model of human rights advocacy during the Calderón administration, which would make it impossible for them to accept the thousands of new cases of disappearances and homicides that emerged after 2007. They simply did not have the resources to adopt more than a few new cases.

been issued 13 times The more permissive IACHR granted protective measures 14 times in Mexico in 2011 and 2012. (PBI, 2013).

⁶¹ His family subsequently formed the Association of Relatives of the Detained, Disappeared and Victims of Human Rights Violations in Mexico, a victim-led organization in Guerrero.

⁶² The case would be reported and supposedly investigated in the same labyrinth of courts as many cases are today: family members of Radilla filed formal complaints with the state attorney general's office in 1992 (PGJEG); with the municipal authority in 1999, with the national prosecutor's office in 2000 (PGR); and finally with the Inter-American Commission of Human Rights (IACHR) in 2001, and the Inter-American Court of Human Rights (IACoHR) in 2008.

Second, the coalition of national and international organizations mobilized in the Radilla case demonstrates the high level of both internal and international integration of the Mexican human rights community. All of the prominent Mexican human rights organizations – the gatekeepers Frey talks about – signed an amicus brief to the IACoHR arguing for a judgment against the Mexican state. When the IACoHR ruled that “regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance,”⁶³ all of these Mexican organizations, together with Human Rights Watch, Amnesty International and a slew of UN bodies issued reports specifically condemning the military justice system. The US government joined this civil society chorus, suspending some of its military aid in 2010 as a result of the IACoHR ruling.

Third and finally, the Radilla case highlights the inability of Mexican human rights organizations and their international allies to change the Mexican state’s behavior. Despite the broad coalition calling for change in the wake of the definitive ruling by the IACoHR, no substantive change occurred in Mexico’s military justice system nor were steps taken to narrow the scope of military jurisdiction (Anaya, 2013).⁶⁴

While the gatekeeper human rights groups saw the IACoHR ruling as at least a partial victory, smaller organizations with fewer resources and/or in states with more dangerous

⁶³ Inter-American Court of Human Rights , Case of Radilla-Pacheco v. Mexico, Judgment of November 23, 2009. Paragraph 274.

⁶⁴ In 2014, there were promising concrete legislative actions taken to overhaul military justice system. See <http://justiceinmexico.org/2014/05/02/mexicos-chamber-of-deputies-approves-major-reforms-to-the-military-code-of-justice/>. However, a timeline for implementation remains unclear, as does the extent to which this legislative change will translate into a change in the way cases are actually allocated.

contexts or more dysfunctional justice systems have found strategic litigation frustrating.

The head of a small state-based NGO reported that:

For us, strategic litigation has been a disaster. There is simply not the space for success, because there is total impunity – the State Human Rights Commission and the Attorney General’s Office collude to prevent cases from moving forward, so there is really no way to make progress. So, we have changed and broadened our notion of what our mission is: we started with the idea to do strategic litigation, but now we are doing a lot of documenting of cases... Hopefully even though the conditions are not right currently for us to win [any judicial victories], they will be soon! (Anonymous interview, March 2011).

In sum, prior to 2006, a small number of gatekeeper human rights organizations emerged in Mexico largely in response to repression perpetrated by the federal government, and in the specific regions in which the repression had taken place. These organizations constituted a core group of activists, many of which were based in Mexico City. These groups adopted a classic human rights frame of focusing on the federal government as the responsible party in cases of human rights violations, and they competently and consistently critiqued the federal government’s violation of its citizens’ human rights.

These organizations differed in their view of whether it was possible to reform the state, and their corresponding strategies likewise varied. While confronting the state was the domain of leftists social movements located largely outside the network of the human rights organizations, the work of reforming the state was taken up by a small group of internationally connected, relatively well-funded human rights organizations. These groups used integrated defense and strategic litigation to generate legal precedent and institutional reform, and while they experienced several high profile victories, the

implementation of these “victories” most often stalled. At the advent of the Calderón administration, these groups had the resources, national and international contacts and political positioning to take on the unprecedented violation of the right to physical integrity that was about to occur in Mexico. Would they?

IV. 2006-2012: The Muddiness of Violence, and the Emergence of the MPJD

Felipe Calderón’s administration would be the bloodiest in Mexican history. Between December, 2006 and December, 2012 there were more than 60,000⁶⁵ violent deaths and an additional 26,000⁶⁶ people were reported as disappeared. This increase in violence shook Mexican society to its core, and Mexican people began to respond: mobilization shifted in focus towards demands for security and justice, and an increasingly diverse group of societal actors directly affected by the violence demanded not only that the Mexican state answer for violent crimes committed by its own agents, but also that it be held accountable for stopping the wave of violence it was instrumental in creating by changing its militarized strategy and providing justice for victims of violence.

This new wave of citizen mobilization was quite different and apart from the human rights community’s reaction discussed in the previous section. It took place mainly outside of the areas hardest hit by the Dirty War, and instead occurred in areas of Mexico hit hard by the drug war violence. The location, however, was not the only difference.

Whereas the human rights community saw the powerful, centralized government as their

⁶⁵ These numbers are disputed and have been revised many times. 70,000 homicides is the estimate from Peña Nieto’s Attorney General, released in 2013. <http://elcomercio.pe/actualidad/1511471/noticia-mexico-lucha-antidrogas-ha-dejado-70000-muertos-ultimos-seis-anos>

⁶⁶ The government figure, as of February 2013, was 26,122. <http://www.bbc.co.uk/news/world-latin-america-21597033>

enemy, the emerging actors sided much more closely with the revisionists: their position in the periphery, as opposed to the core, meant that they had witnessed the low-level violence of the twentieth century, and observed the fluid and relational nature of violence and the provision of justice. I argue in the next section that being from a periphery state with a different conception of bureaucracy and justice is not a sufficient condition for the emergence of an advocate group. It may, however, be necessary, given that the advocates must be willing to negotiate complicated state bureaucracies, locate allies, and exploit these relationships. If they sided with the traditionalists and believed that the presidency was all-powerful, as many activists do, these alliances would appear impossible or foolish, at best.

Given the difference in how the established human rights community vs. the emerging civil society groups saw violence and the state, it should come as little surprise that the human rights community largely failed to react and adapt their strategies in the face of this unprecedented assault on the right to physical integrity and the corresponding shift in civil society concerns.⁶⁷ Writing in 2012, Joy Olson, the Executive Director of the Washington Office on Latin America (WOLA), a key ally of many of the Mexican human rights groups, reflected on this absence:

⁶⁷ A 2011 report from the UN Working Group on Enforced or Involuntary Disappearances reflected the difficulty of classifying disappearances in the midst of Mexico's context: "Many cases of abduction and offenses similar to enforced disappearances are committed by organized criminal groups. However, apparently, not all disappeared persons were abducted by independent organized criminal groups; the State is also involved in enforced disappearances in Mexico. The Working Group received specific, detailed and reliable information on enforced disappearances carried out by public authorities, criminal groups or individuals with direct or indirect support from public officials. Due to the prevailing impunity, many cases which could come under the scope of the offense of enforced disappearance are reported and investigated as different offenses, or are not even considered to be offenses." UN: Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Mexico (A/ HRC/19/58/Add.2), paragraph 17, December 20, 2012.

I think I know at least in part why the violence in Mexico today has not been the focus of the human rights community. It is because this kind of violence doesn't fit the traditional human rights framework... The work of human rights groups is based in international human rights law. That law, originating in the Universal Declaration of Human Rights, is focused on the responsibility of the state... Killings, torture, and disappearances carried out by the state are violations of human rights. On the other hand, killings, torture and disappearances carried out by the Zetas and other criminal organizations are crimes...

The human rights community has been stuck in an agenda that was developed in another era when the state was the principle perpetrator of abuse, when non-state actors were armed combatants in wars, and where the international law of war applied. Most human rights organizations in Latin America were founded during that era. ... [These organizations continue to] prosecute emblematic cases of state abuse, often cases there are over a decade old... While these are important issues, violence related to organized crime is the proverbial elephant in the room.⁶⁸

By 2011, it had become clear that Calderón's frontal assault on organized crime was costing an enormous number of lives, and that the weak Mexican state was not in control. Smaller human rights organizations (not the gatekeepers) located in the areas most affected by violence were receiving a growing number of reports of disappearances and murders from family members of victims. These groups were largely on their own to adapt their practice, methodology and analysis in the face of this transformed political reality, as the national human rights organizations, located mainly outside areas hit hard by the violence, continued to work and think as they always had.

In the spring of 2011 the Movement for Peace with Justice and Dignity (MPJD) emerged following the murder of well-known poet Javier Sicilia's son. The MPJD would tap into the outrage, fear and anger that Mexicans felt in response to the violence, filling the vacuum left by the human rights organizations. In the context of a more open political

⁶⁸ Joy Olson, 2012. Organized Crime as Human Rights Issue: Where is the Outrage? Accessed last on 6/24/14: <http://www.drclas.harvard.edu/publications/revistaonline/winter-2012/organized-crime-human-rights-issue>

opportunity structure, where elite alliances were rapidly shifting and institutional openings were being created by bureaucrats desperate to do something to respond to the breakdown of the state, the MPJD, together with smaller human rights organizations and emerging victim-led organizations, began to nurture an alternative understanding of violence in which it was understood that violence was emanating from conflicts between federal and local forces, and that there clear course of action would be to build a different type of relationships with certain state actors. These relationships, born out of the need of both state and non-state actors to do *something* to stop the violence, in their most ideal form were collaborative, respectful and premised on good faith – and embodied in poet Sicilia’s practice of *besos* and *abrazos*, embracing and cheek kissing all those he met with, including high-level state officials.⁶⁹ The thinking of these new non-state groups was that not only the Mexican state but all of society had been pulled into a war that benefitted no one and in which civilians were cannon fodder, and that in order to fix it, all those affected would need to work together to rebuild the *tejido social*, social fabric. This meant reaching across historic political, identity and class divisions, and attempting together to solve the shared problem of violence. For human rights groups founded within the ideational paradigm of the state as perpetrator, this shift required a high degree of ideological flexibility, and a commitment to responding to the emerging needs of the local population. Flexibility and commitment, however, were only half the battle: occupying the advocate position also necessitated gaining access to state officials, and

⁶⁹ Most famously, Sicilia kissed an uncomfortable President Calderón on the cheek in the summer of 2011 at the beginning of the first roundtable forum with the MPJD.

building trusting relationships with them.⁷⁰

In the following sections, I review the political milieu of civil society groups of the early Calderón years and discuss the MPJD's emergence and activities in 2011 and 2012. I present evidence that Javier Sicilia and the MPJD are classic social movement entrepreneurs who have worked hard to bridge different societal actors. Further, I argue that the MPJD has had an important role in changing the beliefs of Mexicans about victims of violence, and opening up access to institutional spaces previously closed to these victims. I use these narratives to illustrate how advocates emerged in the context of the increase in violence during the Calderón administration.

A. 2006 – Early 2011: New Social Actors Emerge

In addition to the gatekeeper human rights organizations, by 2010 Mexican citizens' concerns had begun to shift to focus on local violence, and they were creating new groups to respond. These new groups emerged with a broader understanding of repressive forces in both the state and societal sphere and a distinct understanding of the Mexican state.

These groups fell into three main categories:⁷¹

**** New Activists: Local movements and organizations of those directly affected by***

violence: In many states affected by violence, victims of similar types of crimes, most

⁷⁰ These dynamics describe national-level politics in Mexico: Chihuahua is an early riser that experienced many of these dynamics prior to 2011 because of the movement against femicide, which will be discussed in the final section of this chapter.

⁷¹ The organized reactions to the killing of two groups of people are not reflected in these categories: migrants (largely from Central America) and journalists. Migrant shelters and organized Central American mothers have raised awareness of the violence against migrants, by all accounts one of the most vulnerable and hardest-hit groups. Mexico continues to be one of the most violent places for journalists in the world, with at least 74 journalists killed since 2006 according to the State Human Rights Commission. Mobilization against violence against journalists has largely been taken up by existing human rights groups.

often the disappearance or murder of loved ones, had begun to come together by 2010. Their work usually revolved around two central axes: (1) providing and/or seeking psycho-social support for family members of victims;⁷² and (2) pursuing justice and encouraging the state to investigate crimes. In addition the large gatekeeper human rights organizations, many small human rights centers had formed to serve the human rights needs of local populations throughout Mexico, mostly in the mid-1990s. While new groups varied in their links to these established local human rights centers and faith-based organizations, they often formed under the auspices of one of these organizations who had some experience in providing both psychological and legal support, and often provided a physical space for these new groups to meet. The victim-led groups were only rarely officially registered with the state as “Civil Associations” and their members generally came from all different economic classes, but especially the poor. They often staged small protests in front of the governor’s or other state offices demanding justice, and they usually did not receive a high level of sustained media attention, though the local media periodically covered their protest activities. Across the board (except in Chihuahua), as of 2010 these groups did not have access to state officials, and hence could not play an advocate role.

* ***Groups of victims that arose around a specific tragedy:*** As horrific acts of violence, often with multiple victims, began to be commonplace under Calderón, groups of family

⁷² Psycho-social support, or *apoyo psicosocial* in Spanish, is a term widely used by NGOs and social movements in Latin America to refer broadly to the psychological and social support that victims of violence need. The ICRC discusses psycho-social support as follows: “Early and adequate psychosocial support can: prevent distress and suffering developing into something more severe; help people cope better and become reconciled to everyday life; help beneficiaries to resume their normal lives; meet community-identified needs.” <https://www.ifrc.org/en/what-we-do/health/psychosocial-support/>

members of these victims formed. The victims were mostly middle or upper class, and the demands they made on the state typically included justice in their specific cases, along with general calls for improved security and justice. These groups were different from those seen previously largely because of how they viewed the state: these victims had not been activists, like those killed in the Dirty War, nor had they been targeted for their political beliefs. Because of this, they rarely collaborated closely with other human rights or victims' organizations.⁷³ In all of these cases, these groups were granted direct dialogue with the president and other high-level government officials. These cases continue to receive extensive local and national media coverage, as well as attention from elected officials who promise to prosecute those responsible.

- *Guardería ABC, Hermosillo, Sonora*: In June 2009, 49 children were killed in a fire at a state-run nursery school. Though this case does not have links to organized crime, it has received high levels attention because of the negligence of state employees that led to the fire and the high number of fatalities.

- *Tec de Monterrey, Monterrey, Nuevo León*: In March, 2010, two students were killed on the edge of an elite university campus by members of the army, who then disguised the students as members of a criminal organization.

⁷³ In some cases, they were fact positioned in opposition to gatekeeper human rights groups. In the case of Villas de Salvárcar, one of the young men arrested for perpetrating the massacre was later defended by ProDH. He credibly claimed that his confession had been obtained through torture. ProDH took on his case, using their rigorous judicial methodology, and bringing the case in front of the IACoHR. This angered many of the families from Salvárcar, who believed the young man, named Israel Arzate, was involved in the massacre (Interviews with members of ProDH, and meeting with family members of those killed at Villas de Salvárcar).

- *Villas de Salvárcar, Ciudad Juárez, Chihuahua*: In January, 2010, 18 high school students were killed at a party by an unknown group, but there were indications that it was a case of mistaken identity by a gang with organized crime ties.

- *Casino Royale, Monterrey, Nuevo León*: In August, 2011, 52 people died in a casino fire set by organized crime.

While these groups have clear access to the state, their limited missions (they don't receive new cases, and hence don't collaborate with the state in responding immediately to violence; rather than facilitating multiple investigations, they pressure the state for advances in their particular case) distinguish them from advocates.

* ***Corporate Law and Order Groups***: Even before the violence of the Calderón administration, conservative groups sponsored by coalitions of business people or a single wealthy person emerged to push a law and order agenda. These groups, most often rooted in local contexts and at odds with local DTOs and their government and police allies, focus blame for violence on criminal groups, and work hand-in-hand with the state to implement policies that have the stated goal of strengthening the justice system and protecting citizen security. Most report having worked in favor of the 2008 and 2011 constitutional reforms. The most prominent of these groups are *Renace*, Reborn, founded in 1994 in Monterrey, and *México Unido Contra la Delincuencia*, Mexico United Against Delinquency, or the MUCD, founded in 1998 (and best-known for its role in planning a

large 2004 national protests which called for judicial reform and security). While concerned about justice, these groups do not accept individual cases and advocate on their behalf (*Renace* advises victims as to their rights, but does not provide continuous support). Rather, they see their role as lobbying for changes in national legislations.

As violence increased under Calderón, and the MPJD articulated a “victims’ voice,” the Calderón administration repeatedly called upon two family members of victims, Alejandro Martí and Sra. Wallace, both explicitly aligned with this conservative “law and order” camp. The President looked to these family members of victims to counter-balance the more critical voice of the MPJD, and to give legitimacy to initiatives that purported to help victims.⁷⁴ For example, both Martí and Wallace would be called on to be present at press conferences announcing the Victims’ Monument, a project co-opted by the state and rejected by the MPJD and human rights community. While these groups have access to the state, their top-down understanding of reform led them away from the practices key to the advocacy role.

B. The Movement for Peace with Justice and Dignity

The killing of Javier Sicilia’s son, a middle class medical student and clean-cut athlete, on March 28th 2011, is similar in many ways to other horrific cases of killing discussed

⁷⁴ Fernando Martí, the 14-year old son of well-known CEO Alejandro Martí, was kidnapped and killed in July 2008 with the apparent involvement of federal police. Martí would go on to found the organization México SOS, which focuses on citizen security, giving security tips to citizens as to how to stay safe when traveling, for example. Isabel Miranda de Wallace’s son was kidnapped in 2005. Señora Wallace, as she is known, then founded the organization *Alto al Secuestro*, Stop Kidnapping, and worked to draft and pass anti-kidnapping legislation.

above. Juan Francisco Sicilia's death was a senseless killing of a person not linked in any way to the drug violence, perpetrated by a criminal gang. However, Sicilia's position as a respected poet, social commentator and ally of the left – he had a weekly column in Mexico's most prestigious news magazine in which he had been critical of Calderón's militarized strategy, and repeatedly called for the enforcement of the Zapatista-backed San Andrés Accords – positioned Sicilia quite differently from these other groups.

Sicilia appealed to the left, to human rights advocates and organizations, and to other victims who had lived through terrible tragedy. This enabled Sicilia and the MPJD to connect diverse constituencies, or in social movement terms, broker scale shift, between these previously disconnected or, in many cases barely articulated, groups.⁷⁵ When roughly 200,000 people joined Sicilia in Mexico's central square in May 2011, the brokering potential of Sicilia was proved, and the MPJD was born. Using the rallying call *Estamos hasta la madre* (roughly translated, "We have had it up to here"), the MPJD succeeded in connecting many of the smaller human rights groups, emerging victim-led organizations, and also numerous Mexicans who had not previously participated in social movement organizations.

With the self-conscious goal of building a national movement, the MPJD concentrated on bridging the claims and identities among all those directly affected by violence (people murdered or disappeared and their family members) under the identity of *víctimas*

⁷⁵ In social movement literature, *brokering* is defined as "information transfers that depend on the linking of two or more previously unconnected social sites" (Tarrow and McAdam 2003: 9). This brokering is done with the goal of building a bigger, stronger movement.

(victims)⁷⁶. From the beginning, Sicilia rejected an exclusive focus on victims that had been the victims of violence perpetrated by federal forces, and he sought to speak also to the local realities of victims caught in the civil war between federal, local and DTO forces. The MPJD sought to establish an expansive, inclusive movement by physically traversing most of the country in two nationwide caravans in June and September of 2011. During these caravans, more than 700 people visited more than 35 different Mexican cities. In each one, a stage was set up where family members active in the MPJD would join local people with similar stories of loved ones who had been murdered or disappeared, and they would alternate turns speaking, each giving “victim testimony.” The people who came out to greet the caravans joined with local human rights organizations and, especially in Southern Mexico, movements that have historically focused on demands for social and economic change. By sharing the stage with the unemployed mother whose son had been disappeared while working for the army, the street vendor whose son was disappeared while working as a street performer and the wealthy couple whose son had been disappeared from his car after being stopped at an army check-point, Sicilia and the MPJD successfully changed “the number and level of coordinated contentious action leading to broader contention involving a wider range of actors and bridging their claims and identities” – the definition of scale shift (McAdam, Tarrow, Tilly, 2001: 331).

Apart from its role connecting citizens, organizations and movements, the MPJD also presented a very different model of interacting with the state from its inception. Javier

⁷⁶ Social movement literature discussion of the concepts of meta-narrative or master frame are also useful in analyzing this phenomena. See McAdam, 1996: 41-43; Snow, Rochford, Worden and Benford, 1986 for a discussion of framing.

Sicilia became well-known for his practice of *besos y abrazos* – giving hugs and kisses to all those he met with. Sicilia was not naïve in his view of the state, and wrote and spoke of systemic corruption and incompetence. Despite this, rather than regarding the state as unreformable or flawed, Sicilia cited pacifist leaders such as Gandhi and Martin Luther King as inspiring his position of peace and reconciliation. In his eyes, cooperating with state officials and negotiating in good faith was not only consonant with his Christian beliefs, but was the strategy most likely to result in change.

The citizen organizing and government meetings of the MPJD enabled it to effectively convey one central idea: that those killed or disappeared were “victims” of violence. This notion challenged the Mexican government’s narrative that those dying from the drug war were criminals. The common refrain amongst top governmental officials before the MPJD had been that if someone was killed, *estaban en algo*, roughly translated as they must have been involved in something that led to and justified their death, and that furthermore the presumed guilt of the deceased justified the absence of any investigation into their killing. Many described having been ashamed to be associated with their disappeared or murdered loved ones prior to the emergence of the MPJD because of the assumption that they had been involved in violent or illegal activity. Sicilia’s son, whose unquestioned innocence and wholesome reputation was an effective and constant rebuke to this government position, provided an opening for many family members of those killed or disappeared. Sicilia and the MPJD encouraged the attribution of similarity for those people drawn to the MPJD caravans and events (Della Porta and Tarrow, 2005: 129). That is, the mechanism they used to connect the diverse constituencies that had

been affected by violence was the recognition of what they all had in common: like Sicilia, these people had lost a loved one to violence. This identification with Sicilia as a victim proved a powerful justification for coordinated action, and spawned national protests and the consolidation of victim-led groups in most of the cities that the MPJD caravans visited.

The MPJD sought to solidify recognition, or “certify” the political identity of victim in 2011 and 2012. By certification I refer to the “validation of actors, their performances, and their claims by external parties, especially authorities” (McAdam, Tarrow, Tilly, 2001). In 2011, Sicilia and other family members of victims active in the MPJD met publicly with President Calderón twice, along with other national government authorities. It was rare, if not unheard of, that a civil society organization was able to demand and obtain a public audience with the President, and these high-level meetings provided validation that the MPJD and the victims it represented were legitimate political actors who merited the attention of the Mexican state. In 2012, through the codification of *víctimas* into law⁷⁷ and the participation of victims in dialogues with presidential candidates,⁷⁸ the MPJD solidified the advances it made in 2011 in the construction and

⁷⁷ The *Ley de Víctimas*, or Victims’ Law, signed into law on January 9th, 2013 by Enrique Peña Nieto, obligates the government to create a reliable registry of the murdered and disappeared, mandates the financial compensation of family members of victims of violence, and lays out victims’ rights as they seek protection from the government. It was written by a coalition of academic and civil society groups who came together at the MPJD’s request following their 2011 meetings with President Calderón, who were able to present it to Mexico’s Congress by April of 2012.

⁷⁸ On May 27th, 2012, a month before Mexico’s presidential elections, the MPJD brought together the four presidential candidates at Chapultepec Castle in Mexico City. Their goal was to place the drug war, the violence it had generated and the lack of justice for victims at the center of the electoral agenda, and to ask the candidates to commit to end the violence if they were elected. Sicilia, together with family members of people killed or disappeared during Calderón’s administration, national press, and each candidate and their staff, sat down at a table together and for 90 minutes spoke of the way forward for Mexico. Javier Sicilia’s speech to the candidates: <http://movimientoporlapaz.mx/es/2012/05/28/javier-sicilia-habla-a-los->

certification of “victims of violence” as a legitimate political identity. Additionally, the MPJD decided to build on its success in brokering and scale shift by launching an ambitious effort at brokerage between the United States and Mexico: the MPJD led a caravan to the United States in an effort to link the victims of militarized drug and border in the US with victims of the violence in Mexico, and worked to assemble a bi-national coalition capable targeting policy change in the areas of drug prohibition, arms trafficking, money laundering and immigration.⁷⁹ The caravan was warmly received by communities in the US – which the Mexican press reported on widely at home, and which underlined the legitimacy of the MPJD as a transnational actor.

Through these certification activities, the MPJD, together with their new allies, would largely succeed in changing the way people talked about, and perhaps thought about, the murdered and disappeared. The government-sponsored message that those killed or disappeared were somehow guilty and complicit in their own demise was challenged by the idea that those affected by the violence in Mexico were victims, regardless of who had victimized them (the state or organized crime), and regardless of class. Public discourse, especially the media, began to acknowledge that these victims were entitled to an investigation into the circumstances of their deaths and to the punishment of those responsible. Members of the media and social movement leaders I spoke with concurred

[candidatos-y-la-candidata-a-la-presidencia-de-la-republica/](http://eleconomista.com.mx/sociedad/2012/05/28/sicilia-cuestiona-presidenciales/). For an excellent brief summary of the MPJD’s presentation to each candidate: http://eleconomista.com.mx/sociedad/2012/05/28/sicilia-cuestiona-presidenciales, or <http://www.animalpolitico.com/2012/05/en-reunion-con-el-movimiento-por-la-paz-josefina-se-disculpa-a-nombre-del-pan/>, which includes the full transcript of each candidate’s response.

⁷⁹ The Caravan, organized by the MPJD and Global Exchange, left San Diego, California on August 12, 2012, and arrived in Washington, DC on September 13th. During the 30 days of the Caravan, approximately 125 caravan members stopped in 27 cities. They were received by a coalition of groups, including the NAACP, immigrants rights groups, LEAP (Law Enforcement Against Prohibition), and NGOs working on US-Mexico relations (WOLA, LAWG).

that regardless of their critiques of the MPJD, this conceptual shift conferred legitimacy on all victims of violence in Mexico, and largely helped to open political spaces previously closed to them, especially to poor victims of violence.

C. The Emergence of Advocates

The status quo in the Mexican justice system prior to the Calderón administration had been a quiet standoff: most citizens, with good reason, did not trust the state. As discussed earlier in this chapter, fraudulent elections and corrupt police forces made Mexico's local political and judicial institutions among the least respected in Latin America, and if citizens could avoid contact with the state's judiciary, they most likely would.⁸⁰ State investigatory officials, on the other hand, were paid well to do very little. They had been tacitly allowed to collaborate with members of organized crime if it made them safer or richer, as there were few to no accountability measures. During this standoff, most judicial officials did not interact with Mexican citizens, especially poorer ones, unless they were being accused of committing a crime.⁸¹

The new context of violence made this standoff problematic: regular citizens were confronted with serious crime, and were forced to turn to the state if they hoped to find a disappeared loved one, or to receive justice in the case of their killing. Mexican judicial officials, increasingly under pressure from both activists and their political bosses show some judicial successes, were put in a difficult position: how would the state justice

⁸⁰ See concluding chapter for discussion of why Mexican citizens do not report crimes.

⁸¹ Framing poor citizens for committing crimes has been standard practice in Mexico; see the award-winning documentary 2010 *Presunto Culpable*, or the numerous international reports on torture as a standard procedure to obtain confession in the Mexican judicial system. For example: <http://www.amnesty.org/en/news/mexico-tortured-random-2013-12-15>.

systems they were part of, which had never worked well, show any judicial success while being overwhelmed by the deluge of these complicated cases? Especially when investigating violent crimes often led them to members of organized crime, which could be dangerous for them?

As long as victims were considered complicit in their own disappearances or murders, it had been easy for local state officials to not investigate. When the murdered and disappeared started to be seen by citizens and state actors as victims, however, this reframed their political position. State actors began to see the murdered and disappeared as citizens whose deaths and disappearances merited justice – and eventually, their families began to be seen as people who could be helpful in solving cases. As activists, the MPJD and international organizations more and more loudly demanded justice, these cornered state officials started to look for new options. Many considered, for the first time, a new approach to investigations. Since there was rarely ever any forensic evidence in cases of disappearances (and the state was ill-equipped, as a whole, to process whatever forensic evidence there was), investigators needed to talk to those who knew the victims best, their families, and explore leads together with them: Where was the victim last seen? Who had they called? Had they had conflicts with any police or armed groups? But before they would talk to the families members of victims of violence, they needed a personal introduction – some well-regarded member of society needed to affirm that the local representatives of victims and their families really were legitimate political subjects, and not criminally-affiliated people who *estaban en algo*; who had to have been involved in something nefarious.

In Chihuahua, it was international experts brought in by the governor, in the context of pressure by nearly every international human rights and women's rights organization, that finally opened up the investigatory officials to collaborating with those directly affected by violence. In Nuevo León, it was MPJD leaders marching up to the Attorney General's office with national media and the local human rights leader in tow that finally got victims' families inside the investigative door. Once respected members of the international community or prominent Mexican movement leaders (who had met with the president!) vouched for the family members of victims, they began to build relationships – exchanging information, collaborating on investigations, and working together for judicial progress. While investigators were still putting themselves at risk in many cases, that they were doing so with the support of local, national and international civil society, the state judicial branch and with the publicity generated by the media, the hope was that this generated at least some protection.

IV. The MPJD and state-based organization and movements: Different Results

The MPJD's national campaign to change Mexicans' views of those affected by violence broadly impacted the way victims were seen. However, the effect of this movement was not limited to changing widely held views: the MPJD's caravans physically brought the movement to 18 Mexican states in the midst of the violence of the Calderón administration.⁸²

⁸² The Northern Caravan, in June, 2011 stopped in the following states: Mexico State, Michoacán, Jalisco, Guanajuato, San Luis Potosí, Durango, Zacatecas, Nuevo León, Coahuila and Chihuahua. The Southern Caravan, in September 2011, stopped in Morelos, Guerrero, Oaxaca, Chiapas, Tabasco, Veracruz, and Puebla. Both caravans started in Mexico City.

These visits would be definitive organizing moments in many places, spurring the creation and/or consolidation of new citizen groups (i.e.: “Jalapa por la Paz,” in Veracruz; and “Acapulco por la Paz” and “Hasta la Madre” in Guerrero), and shifting the dynamics between local groups and state actors. At each caravan stop, the MPJD convened local groups to receive them, to plan events that always included a march and a public forum, and to devise any location-specific political messages. Receiving the MPJD caravan was logistically and politically demanding for local groups: the groups needed to have the resources to house, feed and engage the 500 plus caravan participants, and they were asked to come together and agree on local political strategies to advance “peace and justice.”

In June 2011, the MPJD’s Caravan arrived in northern Mexico, the area of the country that had, until then, been hardest hit by the violence of the drug war. While the state of Chihuahua was the most violent in Mexico, neighboring states Nuevo León and Coahuila had also seen their homicides rates double and triple.



In all three states, human rights organization working together with victims of violence had begun to meet with their state officials before the emergence of the MPJD. In Nuevo León and Coahuila, these meetings had been ineffective at improving the provision of justice. While they were going through some of the motions of advocacy, they did not have the relationships necessary to occupy this role – state actors did not trust and respect them, and did not take them seriously as interlocutors who could provide information and insight necessary to move investigations forward. This limited these human rights groups and the victims of violence to activist positions from which they critiqued the state but were unable to affect or substantively connect with the judicial actors. In Chapter Four, I show how the arrival of the MPJD in Nuevo León brokered the local human rights group CADHAC into an advocate role, and how in Coahuila they facilitated the local group’s scale shift to becoming a national organization, but not a change in their position relative to the relevant judicial actors.

Throughout the state of Chihuahua, activist groups had mobilized in the 2000s in

response to the killings of women. These organizations, however, fared very differently during the post-2008 wave of violence. In Juárez, Chihuahua, the most violent city in the world in 2010, a focus on international activism and exhaustion amongst local groups led to the absence of advocates. When a nascent coalition of activists came together to receive the MPJD Caravan, the tenuous coalition exploded in the wake of what they regarded as ideological betrayal by the MPJD, leaving Juárez civil society weaker and less able to confront violence than before the Caravan. The city of Chihuahua, the capital of the state situated just five hours to the south of Juárez, had a far different experience. The Caravan stopped there only briefly, and the well-established groups were relatively unaffected by the experience, preserving their functional advocate/activist relationships.

V. Conclusion and Reflection

In this chapter I argue that Mexico's federal system has produced inter-related but distinct histories of violence. While the federal government dominated the Mexican territory for the 1950s through the 1980s, using violence to subdue local caciques and extract rent from DTOs, by the 1980s and 1990s, rising DTO power and electoral constraints on federal forces eroded the coercive power of the state. This erosion gave way to a resurgence in local control of illicit markets, and as worldwide drug demand exploded, DTO power rose to historic highs, rivaling, and often overtaking, any form of state power.

In this chapter I trace how Mexico's human rights community emerged in response to the dynamics and repressive actions of the federal forces, most importantly the Dirty War of

the late 1960s to 1980s. As the dynamics of violence shifted in the 1990s, these human rights organizations, located mainly in areas where the federal forces had the most repressive capacity, were ill-equipped to perceive and respond to a new, muddier reality of violence. This left a vacuum of civil society organizational capacity to respond to what was increasingly locally-situated violence resulting from power struggles between federal, local and DTO forces. When these conflicts exploded under Calderón, who launched an ambitious offensive against DTOs, civil society responses to violence was without an institutional or organizational home. The MPJD, which emerged in 2011, was the first organization to bridge the local experience of violence with the experiences of those who had suffered at the hands of federal forces. The MPJD's approach created the ideational and in some cases, institutional, space for a different way of understanding to and responding to violence.

Chapter Four

Fighting With the Ocean: Civil Society Dynamics and the Provision of Justice in Northern Mexico

Fighting with the ocean is not an easy thing to do.

Emilio Alvarez Icaza, MPJD leader & IACHR Secretary, 3/23/12

I. Introduction

In this chapter I examine two questions: (1) Why do activists and advocates emerge in some local contexts and not others? And (2) how and why does this matter for determining judicial success? To answer these questions, in this chapter I present case studies of civil society organizing against violence in three Northern Mexican states, Nuevo León, Coahuila and Chihuahua. In Chihuahua, I present a most similar case comparison within the state, looking closely at civil society activity within the state's two largest cities. In response to my first question, I argue that while activist emergence is described largely by changes in state violence and coercive capabilities highlighted in Chapter Three, the transition of activists to advocates requires two necessary conditions. First, activist groups need to be granted access to state officials. This access is most often facilitated by a more politically powerful outside party, located at the national or international level, whose support legitimates and certifies the local actor as a worthy interlocutor. Second, the activist group's beliefs must be sufficiently reformist to allow them to imagine the possibility that interacting with state officials might be productive in achieving their goals.

In each case, I use process tracing to establish how and why the dynamic of activists and advocates emerged. To do this, I first review the local context of civil society organizing up through 2011. Next, I document the impact the national movement the MPJD had on the local political context, and specifically on the relationships among and between local groups and the state. I show that the MPJD played a very different role in these three states. In Nuevo León, the MPJD facilitated access to state officials by the local group, allowing the leading human rights organization to transition from activist to advocate. In Coahuila, the MPJD also provided the local group with access to state officials at the highest level, though it did so unwittingly. The local organization remained in its outsider, activist role, however, because of its beliefs and ideological commitments. In Chihuahua, I highlight how the state's distinct political history, particularly the phenomena of the femicide, or the murders of women, led to the creation of activists and advocates prior to the arrival of the MPJD. I argue that international pressure from the UN, foreign governments and international organizations opened access to governmental officials for activists in both Chihuahua City and Juárez. In Chihuahua, local groups naturally fell into complementary activist and advocate roles. In Juárez, however, local groups made the strategic decision to pursue international litigation and international allies to the exclusion of building relationships with state officials. This decision, partly taken because of their belief that collaborating with the state would not be productive and partly because they thought that the international route would yield positive results, resulted in weak and exhausted organizations when the next wave of violence hit.

A second narrative that runs throughout this chapter concerns the different roles played

by the MPJD in creating, brokering and sometimes undermining activists and advocates. While the MPJD was a key broker of access to state officials in Coahuila and Nuevo León, in Chihuahua City the MPJD was irrelevant – local groups already had access to state officials. In Juárez however, the MPJD visit came as the exhausted civil society groups were just starting to rebuild. The MPJD's reformist views about the state divided a nascent coalition of groups, and their visit was disruptive and counter-productive for local and regional coalitions in this political context. The MPJD's varied role is illustrative of the many roles that political actors located outside of the judicial decision-making site play. Many theories of transnational advocacy networks and human rights activism tend to focus on the positive synergies between local and outside groups. This discussion highlighting the role of the MPJD illustrates the complicated and contingent nature of political interactions between and among groups that have ostensibly compatible goals.

In answering the second question posed in this chapter, how and why do activists and advocates matter this matter for determining judicial success, I review the experiences local groups have had litigating cases with the state, highlighting the different roles activists and advocates play in influencing investigative and judicial processes. I argue that though both national and international groups are important in determining judicial outcomes, it is the relationship between local organizations and the state that matters most in the provision of justice. The boomerang theory (Keck and Sikkink 1998) in its most simple form would predict that the more international and national attention any of these organizations received, the more powerful a political punch they would carry, and

therefore the more success they would have breaking through the “blockage” of impunity. This chapter demonstrates that, quite to the contrary, the city with irrefutably the most international visibility and support, Ciudad Juárez in Chihuahua, has actually had the worst judicial outcomes of the four cases studied in this chapter. I argue that the failed boomerang of Juárez demonstrates that our understanding of how human rights advocates affect judicial outcomes is incomplete.

II. Why do activists and advocates emerge in some local contexts and not others?

A. Nuevo León: How Activists Became Advocates

1. Violence builds, unproductive state meetings: 2009-2011

In 2009, violence began to descend on Monterrey, the capital of northern state of Nuevo León. According to most experts, the violence resulted from a turf war between the Gulf cartel and the Zetas. By 2010, gun battles in broad daylight, corpses hanging from bridges and kidnappings had become common in this formerly peaceful industrial hub. In August 2010, a PAN mayor of a tourist hub near Monterrey, Santiago, who had been trying to address corruption in the local police force, was kidnapped and found murdered three days later.⁸³

Catholic nun Sister Consuelo Morales founded CADHAC, Citizens in Support of Human Rights, in Monterrey in 1993. It initially concentrated on documenting and advocacy around human rights abuses suffered by prisoners in the state’s many prisons. As violence in Nuevo León worsened, CADHAC – Nuevo León’s only NGO dedicated to

⁸³ Wilkinson, Tracy, “Mayor found dead three days after being kidnapped.” August 19, 2010. <http://www.latimes.com/la-fg-mexico-mayor-20100819-story.html>. Accessed 6/13/13

defending civil and political human rights – shifted its focus to disappearances. This shift was spurred by the demand of the people who came to CADHAC to ask for help: in 2009 and 2010, they received fewer than 15 reports of disappearances; in 2011, they received 105 cases, and in 2012, more than 215.

With this increase in disappearances, a small group of family members of victims came together, independent from CADHAC, in 2010. They asked the State Attorney General's office to meet with them in order to push for advances in the investigations of their cases, and they were granted meeting with public prosecutors (*ministerios públicos*), relatively low-level members of the state judicial bureaucracy who participate in investigations. These meetings were described by one victim as follows: "At first we met every eight days, then every two weeks, then every month, then every two. The public prosecutor would always cancel the meetings. And when we did have them, they would listen to us complain about the fact that there were no advances in our cases. Then they would nod their head, expressing sympathy. And that was it. No progress." By the summer of 2011, the family members of victims saw that these meetings were exhausting them, and were not a true route to justice.

2. MPJD Arrival: Transition from Activist to Advocate

The MPJD's Northern Caravan arrived in Monterrey on the evening of June 7th, 2011. Despite being five hours behind schedule, 1,500 people awaited the caravan in the central plaza of the city. A group of more than 30 organizations in Monterrey had come together to welcome the caravan. According to organizers of this event, this group had never come

together before: it included groups from the far left, and also non-political citizen organizations. There had been previous marches, but only with the MPJD was it possible to bring together more people from across the political spectrum. On May 8th, 18 organizations and about 1,000 people came together in solidarity with the MPJD, which was simultaneously holding its largest protest in Mexico City. While the coalition did not continue to work together after the Caravan's visit due to their pre-existing ideological and political differences, the MPJD's national visibility and appeal resulted in bigger protests in Monterrey than had been seen in several decades. Mobilizing in this historically a-political city was seen as an important victory in and of itself.

When the Caravan arrived, after multiple victims had taken the stage to give their testimonies, a smaller commission led by Sicilia and Emilio Álvarez Icaza, the MPJD's de facto head of political affairs, and including Sister Consuelo, departed for the State Prosecutor's office. Despite it being almost midnight, the State Attorney General, Adrián de la Garza, received Sicilia and the commission. De la Garza opened the doors of the Attorney General's Office, actually and symbolically granting access to civil society advocates seeking justice. He agreed to establish investigatory working groups that he would personally oversee. These groups would coordinate the investigations into the disappearances of the cases that were brought to him that night. De la Garza, a political appointee of the PRI governor, guaranteed the assembled press, family members and civil society that he would be personally accountable for doing everything possible to seek justice in cases of disappearances.

Though CADHAC was only one member of the coalition of groups that welcomed the Caravan, it was the only one at the time with the capacity to provide judicial support for the family members of victims who had been disappeared in Monterrey. Because of this, it emerged as the go-to organization for the many victims that came out of the woodwork following the caravan's visit, as well as the majority of the families that had been previously involved in the working groups with the public prosecutors. CADHAC suddenly had more cases than it had ever seen before. They hired additional lawyers, and developed a rigorous documentation and judicial methodology to assist with the cases in which they met with victims weekly to document the advances in their cases. The cases that came to them reflected the local manifestations of violence discussed in the previous chapter. Most of the cases were of young men who had been disappeared while at work, and a fair number of the family members reported that their sons had been policemen. Most were lower income, though notably, 20% were not. Only about one third of the cases showed cleared involvement of members of state forces, mostly local police.

The MPJD's visit fundamentally altered both the access CADHAC and victims of disappearance had to the State Attorney General's office, and their beliefs about them. Following the arrival of the caravan, the first of many meetings with the Prosecutor's office was held in July 2011, and they have continued to meet every other month through 2014. Javier Sicilia and Emilio Alvarez Icaza attended the majority of the early meetings. Their presence summoned the media, served to remind the State Attorney General of the commitment he had made to personally oversee the investigations of disappearances, and made it clear that they regarded CADHAC as the legitimate interlocutor between victims

and the state. Prior to the MPJD's visit, CADHAC did not perceive that the State Attorney General's office was politically or judicially committed to investigating these cases. Their discourse was vocally critical of the state's failure to address human rights abuses, and they did not have regular contact with state officials. CADHAC describes the MPJD's caravan visit, and the subsequent presence of Sicilia and Álvarez Icaza, as having provided the political will to persuade the high-level state actors to come to the table to move the investigations forward. CADHAC also credits the MPJD with shifting their beliefs about the state, and specifically teaching them the value of dialogue: they were previously skeptical of the state's willingness or ability to pursue these cases. Only with the MPJD's involvement did they trust the state was under enough pressure to produce results, and this willingness to begin dialogue provided an opening for building trust and relationships, particularly with the Attorney General and the top officials in charge of overseeing all investigations.

B. Coahuila: Activists Who Gain Access

1. Early Similarities with Nuevo León

Saltillo, the capital of Coahuila, is just 60 miles from Monterrey, and the violence that Coahuila experienced involved the same rival drug gangs during the same time period as its neighbor. The family members of those directly affected by violence also reacted similarly to their neighbors: in 2009, a group of families of people who had been disappeared came together to form FUUNDEC, *Fuerzas Unidas para Nuestros Desaparecidos en Coahuila*, Forces United for Our Disappeared in Coahuila, after the authorities failed to make any significant progress in the investigation of their cases.

Like in Monterrey, the victims came together before having an institutional affiliation, and then began to look for assistance. They found a natural institutional ally in the human rights center in Saltillo, the Centro de Derechos Humanos Fray Juan de Larios. The director, Blanca Martinez, was an experienced organizer – she had been director of FrayBa, the well-established Chiapas-based organization that eschews litigation – before coming to Saltillo. Though FUUNDEC never formally merged with Fray Juan de Larios, largely because of the political importance that Fray Juan organizers ascribed to the idea of having an independent victims’ organization, these two organizations operate in lock step.

Like CADHAC, Fray Juan de Larios had participated in the national human rights organization the RedTDT, had contact with international human rights organizations like Amnesty International, and sent cases to the UN Working Group on Enforced Disappearances. They had also begun to meet with state officials to pursue the investigations into the disappearances of their loved ones, but were able to access higher level officials than their counterparts in Monterrey from the beginning. In January 2010 FUUNDEC held their first meetings with high-ranking members of the state prosecutor’s office to review the case files of the disappeared family members in the group. Crucially, however, these meetings did not build trust between the two sides: they did not meet the standard of “collaboration” for either the state or FUUNDEC. Though some information about the cases was communicated, members of FUUNDEC did not view the state’s participation as being in good faith. Because of what FUUNDEC perceived as a lack of

good faith, by March of 2010, after just three meetings with the prosecutors' office, FUUNDEC took a step back. Much like the early meetings in Monterrey, the bottom line was that FUUNDEC had seen that the authorities were not advancing in their investigations.⁸⁴

FUUNDEC made the decision that would come to characterize their strategy: since the top judicial authority in the state hadn't made any progress in their investigation, they would escalate the case to his boss: the governor. While they had been able to access the State Attorney General, they could not access the governor. In order to obtain this meeting they had to mobilize. After several different mobilizations, in September 2010 they succeeded in obtaining their first meeting with the governor. At this meeting, they agreed to reestablish the working groups (*mesas de diálogos*), but with significant changes: the governor would be present to oversee the work of his investigators,⁸⁵ and each case would be assigned a government "godfather" who would coordinate each case's investigation⁸⁶.

Despite these changes, members of FUUNDEC, now numbering more than 85 people, saw few advances in these meetings. After frustrating meetings in October, November

⁸⁴ Rather, the prosecutors' office would call members of FUUNDEC before their meetings to ask what advances the family members of FUUNDEC had made, and they would then claim these "advances" in the investigations as their own. Interview with FUUNDEC founding member, February, 2013.

⁸⁵ In these meetings, the Governor, his Secretary of Government, the State Prosecutor, the Case Coordinator and the Public Minister (the state justice department official in charge of the investigation) met with FUUNDEC. These were marathon meetings: the October meetings lasted from noon until 2am as they systematically went through the 85 cases.

⁸⁶ FUUNDEC later would conclude that these case coordinators were meant to disperse and divide their efforts, but at the time, this was seen as an "excellent" set of advances.

and December of 2010,⁸⁷ they asked for the State Attorney General, Jesús Torres Charles, to resign. After the governor announced he would be leaving his job to run the national PRI party, talks broke off temporarily and FUUNDEC again protested, but soon after talks were reestablished with the interim governor, and continued through most of 2011. However, FUUNDEC described the “advances” in these cases as a torrent of paperwork with few real signs of progress.

FUUNDEC began to conclude that underlying the lack of progress in these cases was a lack of political will to investigate, due to the acquiescence and in some cases active involvement of the bosses of those charged with conducting the investigations in the commissions of the crimes. Their suspicions later proved correct as one of the lead investigators employed by the Attorney General’s office, along with the former State Attorney General himself, Mr. Torres, were forced to resign because of ties to organized crime.⁸⁸ FUUNDEC concluded that the only way to overcome the lack of investigations at the state level was to have the cases transferred to the federal judiciary, where they believed that there was a better chance that their cases would receive the attention of politically independent authorities. In the meantime, they would continue to hold the monthly meetings with the state prosecutors to see if these would yield any results, but they would have low expectations.

⁸⁷ In these meetings, the Governor, his Secretary of Government, the State Prosecutor, the Case Coordinator and the Public Minister (the state justice department official in charge of the investigation) met with FUUNDEC. These were marathon meetings: the October meetings lasted from noon until 2am as they systematically went through the 85 cases.

⁸⁸ Jesús Torres Charles, the former State Attorney General was serving as the Judicial Advisor to the Governor, Rubén Moreira in March, 2012 when it was discovered that his brother, Humberto Torres Charles, was “one of the principal leaders in a network of complicity” in which impunity was guaranteed for the local heads of organized crime. Together with Humberto Torres Charles, Claudia Gonzalez Lopez, a lead investigator with the State Attorney General’s Office, and two policemen were charged with leading this network and forced to resign. “Renuncia consejero jurídico de Coahuila tras escándalo de protección al narco” <http://www.excelsior.com.mx/2012/02/19/nacional/81170>.

2. Gaining Federal Access: Disappointment and National Connections with the MPJD

Just as FUUNDEC was deciding that appealing to federal authorities was their only option to move their cases forward, the MPJD was emerging as a national movement. When the MPJD announced that it would pass through Saltillo on their June 2010 *Caravana del Norte*, FUUNDEC began organizing immediately, with the hope that the Caravan's stop would energize their organization and also bring together a more diverse coalition than had previously existed to work on the common problem of violence in the state. The Caravan stopped in Coahuila only briefly on its way to Monterrey, disappointing local organizers who had hoped for a longer, more substantive visit. As the Caravan and MPJD made their way to the northern terminus of the Caravan, FUUNDEC hoped that the problem of disappearances would be central in the political pact that the MPJD and its allies were negotiating in Juarez. After the negotiated pact didn't do this to the extent they had wanted, that was the final straw: FUUNDEC decided not to ally with the MPJD.

Despite this, however, FUUNDEC asked to be allowed to attend the MPJD's first dialogues with President Calderón in July 2011, and the MPJD agreed. At this meeting that the MPJD had carefully scripted, a FUUNDEC member not on the agenda rose to speak at the end of the dialogue and asked for Calderón to meet directly with FUUNDEC. Calderón agreed, and FUUNDEC achieved the national platform that was key to their strategy of escalating to the national level. They subsequently established working groups that included federal investigative officials.

They would do something similar at another political event organized by the MPJD: in January 2013, the government held a signing ceremony for the Victims' Law. This time, FUUNDEC-M⁸⁹ was invited by the Secretary of Government to attend the event. FUUNDEC-M again used this space to ask newly sworn in President Peña Nieto personally to meet with them – and he agreed. As a result, in early February 2013 they held talks with the President, the Mexican Attorney General and the Congressional Human Rights Commission. The agreement coming out of these meetings was to establish collaborative investigative teams: the federal judicial officials would be in charge, and they would devise a protocol to hold the state judicial officials and investigators responsible for progressing in these cases.

As FUUNDEC-M has continued to escalate their cases within the state judicial and executive bureaucracy, they have grown into a powerful, recognized national organization, with over 100 members. Their capacity as activists has grown: they are able to critique, confront and mobilize effectively, and they are now a leading voice on the issue of disappearances on the national political stage. With the accidental scale-shift facilitated by the MPJD, FUUNDEC-M has gained access to state and national officials, and at first glance their meetings look much like those conducted by their advocate neighbors in Nuevo León. Gaining access to state officials, however, has not shifted FUUNDEC-M into an advocacy role. Why is this?

⁸⁹ In 2012, FUUNDEC, based in Coahuila, formed a national group, FUUNDEM, Fuerzas Unidas por Nuestros Desaparecidos en México. Family members of the disappeared from other Mexican states have attended FUUNDEC's meetings with national officials under the banner "FUUNDEM." FUUNDEC-M refers to both FUUNDEC and FUUNDEM.

In interviews with members of FUUNDEC-M and their organizational ally, Fray Juan de Larios, they repeatedly told me that they believed that “the conditions for justice” didn’t exist. Like their ideological allies in FrayBa, they emphasized that the state was not interested in reform, and that their priority was in building a movement, rather than obtaining scarce and, in their view, negligible judicial advances. While high-level state actors, including the two Mexican presidents, the governor of Coahuila and state and national attorney generals, expressed willingness to work with members of FUUNDEC-M to investigate their cases, FUUNDEC-M largely took the position of not trusting the state until the state was able to produce judicial results. State officials accuse FUUNDEC-M of meeting with them in bad faith, while FUUNDEC-M rightly points out that the state brought in narco-affiliated officials to coordinate the investigation into their cases, using this as evidence that it is now incumbent upon the state to prove that it is sincere and capable in its promises to investigate their cases. Regardless of who is to blame, the trust and good faith necessary to facilitate judicial advances and investigative collaboration has not occurred in Coahuila, rendering it a state without advocates. As I will discuss in the next section, this has left Coahuilans with no civil society organization positioned to intervene immediately in cases of disappearances, nor to advocate for concrete judicial advances.

C. Chihuahua: Ciudad Juárez and Chihuahua City

The state of Chihuahua has a long and comparatively extensive history of activism and advocacy in response to violence. Its two major cities, Ciudad Juárez and the state capital, Chihuahua not only have the unfortunate distinctions as being hardest hit by the

violence of the Calderón administration,⁹⁰ but both came under the national and international spotlight prior to the Calderón administration for the prevalence of killing of women – what came to be known as *feminicidios*, or femicides. These two cities, located just five hours apart by bus, with Juárez sitting on the US border looking onto El Paso, Texas, and Chihuahua lying directly south, have very similar experiences with violence and civil society mobilization in many ways. A web of organizations with extensive international connections emerged in the wake of the femicides in both cities to combat violence against women and impunity, and these organizations would be the same ones positioned to deal with the onslaught of violence that began in 2008. In both cities, this work was dangerous: in December 2010, Marisela Escobedo, the mother of a murdered teenage girl from Juárez, was herself murdered in Chihuahua City in front of the state capital as she protested the ongoing impunity in her daughter’s case;⁹¹ in June 2011, Juárez-based human rights center *Paso del Norte* was raided by 20 federal police policemen, who took files and damaged the building. And in both cities, police investigators and members of the press have also been targeted for their work investigating killings and disappearances.

Despite these similarities, however, they had widely divergent experiences during the Calderón administration. In the city of Chihuahua, two organizations successfully occupied the roles of activist and advocate. Juárez, on the other hand, would be left

⁹⁰ Of all cities in Mexico, in 2009 Juárez had the highest number of homicides and Chihuahua was third, and in 2010 Juárez was first and Chihuahua second. TBI 2012, 27.

⁹¹ The murder of Escobedo was caught on video (<https://www.youtube.com/watch?v=QNvgrEKedsw>), and later a member of the Zetas was convicted for the killing. Her killing was supposedly agreed upon by two criminal organizations – the Zetas and La Línea. <http://www.animalpolitico.com/2012/11/cierran-casos-de-asesinatos-de-marisela-escobedo-y-su-hija/#axzz36oqUVZRR>

virtually incapable of responding to the unprecedented violence, and family members of male victims of disappearance and murder would be left without recourse to non-governmental assistance. In this section, I examine the reasons behind these highly divergent experiences with victim organizing and the provision of justice. In Juárez, I first tell the story of the failed boomerang, illustrating how extensive international mobilization failed to produce lasting institutional change. Next, I discuss how the arrival of the MPJD Caravan was counter-productive to the nascent local organizations struggling to find a way forward in their difficult, violent context. Finally, I demonstrate how the MPJD's arrival was a non-factor in Chihuahua, and instead emphasize the local dynamics that led to the productive coexistence of activists and advocates.

1. 1980s – 2009: Families of victims of femicide organize; Historic international outcry

The state of Chihuahua has been an early riser in many ways throughout recent Mexican history. In 1983, following the Mexican financial crisis of 1982, the PAN made its first electoral gains in the country by dominating the municipal elections in Chihuahua, including capturing the mayor's office in Juárez in 1982. Ten years later, Chihuahua would become the first Mexican state to elect a non-PRI governor. Both cities, struggling economically and starting to feel the effects of the burgeoning drug trade, saw an increase in non-governmental organizations targeting social and economic rights.

In 1993, the first alarm bells were sounded about the killing of women, and Chihuahua would begin its journey towards being the first Mexican state broadly identified with violence. At first, isolated groups of family members held vigils and small protests. When

two media-savvy organizers decided to get involved, the issue of violence against women quickly became a salient political issue. Esther Chávez, who worked for a Juárez newspaper, and Judith Galarza, a seasoned human rights activist whose sister had been disappeared in the 1970s, called upon Juárez civil society to support the nascent efforts of family members to raise awareness about the forty women that had been murdered (Wright, 2010, 220). In 1994, a coalition that came together following this call to action, which named itself “Coordination for the Rights of Women,”⁹² highlighted the growing numbers of killings of women who worked in the *maquiladoras* along the border. The Coalition called the phenomena of the killing of women *feminicidio*, femicide, and by 2003 Amnesty International would document 370 femicides – a third of them fitting the pattern of poor, thin teenage girls with long hair who showed signs of being tortured (Staudt, 107; Amnesty International, 2003). As the beginning of femicides coincided with the 1994 implementation of NAFTA, the US press became particularly interested in the story. By 1998, news of femicides in Chihuahua reached the New York Times and CNN.

During this period several groups of family members of victims of violence emerged. In Juárez, *Nuestras Hijas de Regreso a Casa* (May Our Daughters Return Home), emerged in 2001 in response to the torture and killing of Lilia Alejandra García Andrade and quickly became the most visible group representing Juárez victims of femicide. The mother and teacher of Lilia Alejandra traveled internationally to rally support and build

⁹² The members of the Coordinadora en Pro de los Derechos de la Mujer (CPDM) included Comité Independiente de los Derechos Humanos de Chihuahua (CICH), Centro de Orientación de la Mujer Obrera (COMO), Salud y Desarrollo Comunitario (SADEC), Organización Popular Independiente (OPI), Centro de Investigación y Solidaridad Obrera (CISO), Compañeros, Mujeres por Juárez, 8 de Marzo, Asociación de Trabajadores Sociales de la UACJ, Centro para el Desarrollo Integral de la Mujer (CEDIMAC), Comité de Lucha contra la Violencia, Centro de Estudios y Taller Laboral A.C. (CETLAC), Tonanzin, Voces sin Eco y Red de Mujeres. (Garcia, 149).

consciousness of what was happening in Chihuahua. By 2004, members of this organization had “traveled internationally giving talks, participating in documentaries, and speaking before the United Nations, Amnesty International, and international human rights commissions” (Wright 2010: 225). Their focus was on generating international pressure, and scholars writing about their organizing model cited the boomerang, commonly comparing them to Madres de la Plaza de Mayo (Mueller, Hansen and Qualtire, 2009).

At about the same time, in March, 2002, a mother of another young girl who had been tortured and killed, Norma Ledezma, founded *Justicia para Nuestras Hijas* (Justice for Our Daughters) in Chihuahua City. Norma’s 16-year-old daughter Paloma Angélica Escobar Ledezma, a worker at the Aerotec maquila in the city of Chihuahua, disappeared on March 3rd, 2002, and her corpse was found nearly a month later. After authorities failed to investigate the case, and later planted evidence to suggest that Paloma was killed by her boyfriend (he was proved to be innocent, but the real killer was never found), Norma started meeting with other family members. They focused their energy on affecting the state’s response to the killings. On March 18th, 2002 (after Paloma had disappeared, and about a week before her corpse was found) Norma and seven other family members of victims asked for a meeting with the governor. After refusing to move from the state house until the governor met with them, he finally did, and promised to assign competent investigators to their cases. Though many years would pass before *Justicia* would be see real investigatory advances in the cases of femicides, this was an important first step in negotiating with the state, and a very different approach than the

internationally-focused one that *Nuestras Hijas* was pursuing.

These two victim-led organizations, along with several other smaller groups, gained national and international prominence quickly. However, the international networks that trained their attention on the femicides in the state of Chihuahua were often controversial, and the issue of who benefitted financially from international attention became a divisive one. In 2004, a high-profile bi-national march was planned for Valentine's Day. The daylong event, co-sponsored by Amnesty International and V-Day International,⁹³ brought together between 5,000 and 8,000 people on both sides of the Mexico-US border, and the highlight was the crossing of the bridge between El Paso and Juárez. Promoters included Jane Fonda, Sally Field and other celebrities from the US and Mexico, and the coalitions converged on Juárez for a march that aimed to connect victims of violence, feminists and human rights advocates (Staudt, 2009, 121). The local coalition sponsoring this event collapsed amidst allegations of corruption and political illegitimacy, however, and *Nuestras Hijas de Regreso a Casa* ended up holding a separate, simultaneous event, and formally denouncing the US organizers because of differences they had in the political and financial management of the event (Wright 2010, 227).

While international attention would continue after the controversial Valentine's Day event, family members of victims were slowly becoming disillusioned with the possibilities of international solidarity and international litigation. The US-based Mexico Solidarity Network organized four simultaneous caravans highlighting the issue of

⁹³ V-Day International is a US-based NGO founded by Eve Ensler, the author of the *Vagina Monologues*, with the goal of ending violence against women.

femicide in the fall of 2004, (Mueller, Hansen and Qualtire, 2009, 135), and a Hollywood movie starring Jennifer Lopez and featuring the femicides in Juárez was released in 2007. Meanwhile, one of the best-known cases of femicide in Juárez, the case of the *Campo Algodonero*, was making its way, slowly, through the Inter-American system. In this case, in which the remains of six females were found near a factory on a former cotton field in 2001 and which was reported to the IACHR in 2002, the IACoHR took until 2009 to issue a favorable recommendation.⁹⁴ Despite the effort expended to construct international networks and litigate internationally, many family members of victims in Juárez, the focus of the activism, began to see impunity as persistent and unyielding, and many became disillusioned with international action altogether. Their experience was that the boomerang, in short, was not changing their lived experience of violence, nor was it transforming the provision of justice.

The early steps that the state took in response to these killings was illustrative of the victim-led organizations of how international pressure could be deflected by bureaucratic changes that did little to change the provision of justice. In 1994 the governor appointed a special prosecutor to look into the femicides in Juárez, and in 1998, the Special Prosecutor's Office for the Investigation of Murders of Women was created (Amnesty International, 2003). None of these prosecutors lasted long – by 2003 there had been seven prosecutors. In 2004, a special prosecutor named Maria López Urbina had turned

⁹⁴ Part of the IACoHR's ruling called for the national implementation of a rapid, coordinated response to reports of the disappearance of women, called the Alba protocol. The Alba Protocol was pioneered in Juárez in 1993, and requires that DNA of the missing person be taken; that authorities at all levels of government, along with NGOs and the media, be alerted immediately of the disappearance, and that the local Public Prosecutor coordinate the investigation. Civil Society advocates have critiqued the implementation of the Protocol, claiming it is activated rarely and incompletely. <http://www.jornada.unam.mx/2012/07/26/estados/034n3est>

her attention to the failure of previous state prosecutors and state officials to do their jobs. She accused 120 current and former Chihuahua state officials of failing to provide justice in the case of femicides (Mueller, Hansen and Qualtire 2009, 147). Unsurprisingly, she was subsequently removed from her position. While the special prosecutor has originally been appointed to address the femicides in Juárez, as the number of femicides increased in Chihuahua City, and civil society pressure from that city grew, President Fox transformed this position into the Special Prosecutor's Office Investigating Crimes Related to Violence Against Women in the Country in 2006. All of these institutional changes did little, in victims' eyes, to change the systematic practice of guaranteeing impunity for the perpetrators of femicide.

2. Juárez: 2008-2011: Exhausted Civil Society & the MPJD as Spoiler

The disillusionment of victim-led organizations was heavy by the time the new wave of violence hit Juárez in 2008. The conflicts between Juárez-based organizations had been internal as well as external: many coalitions of victim-led organizations had formed and broken, and no group had emerged with the capacity to confront the coming wave of homicides. In 2008, there were 1,500 homicides; in 2009, 2,500. In 2010, there were more than 3,000⁹⁵ – all in a city of fewer than two million people. The vast majority of the victims of these homicides were men. The civil society organizations that had made it through the conflicts of the mid-2000s were focused almost exclusively on women –

⁹⁵ These numbers are supported by INEGI, and were cited repeatedly by Juárez civil society organizations during interviews there in January, 2013. For an analysis of the dynamics which led to this violence, see WOLA, 2010 "Abused and Afraid in Ciudad Juarez: An Analysis of Human Rights Violations by the Military in Mexico." Joint Operation Chihuahua, launched in 2008, deployed more than 2,000 members of the military to Juarez; in 2009 Calderón sent 5,000 more soldiers. These deployments are seen by most analysts as a primary cause of the violence, as they served to fortify one side of a territorial war over the city.

amongst the most solid organizations in 2010 were *Casa Amiga*, which provided psycho-social support to women, and *Red Mesa de Mujeres*, a coalition space for organizations working on women's issues.

These dynamics meant that in the most violent city in the world in 2010, there was not a single civil society organization that was accepting cases of murders and disappearances of men.⁹⁶ The family members of disappeared and murdered men were left to fend for themselves.

Recognizing this shortcoming, in 2010 the local human rights organization, the *Paso del Norte* Human Rights Center, which had played a fairly marginal role during the height of femicides, began to accept a small number of cases of torture and enforced disappearance.⁹⁷ It would take time, however, to publicize this shift, and to build the organizational capacity to accompany these cases. While *Paso del Norte* had accepted legal cases since their founding in 2001, they initially served the local population's general legal needs, from assisting with the documents needed to process divorces to any other legal issues the population faced. During this time, *Paso del Norte* received funding from the state – something not common for a human rights organization. In 2006, the organization changed this practice, and further decided not to engage in dialogue with state officials. As one staff member told me, “we thought - what are we going to gain

⁹⁶ Of the 5,397 people registered as disappeared with the National Human Rights Commission, 1,885 are women. UN: Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Mexico (A/ HRC/19/58/Add.2), par. 67, December 20, 2012.

⁹⁷ As of 2013, *Paso del Norte* had documented 44 cases of torture and fewer than 10 cases of enforced disappearances.

from sitting down with the state? For us, it [started to be] different because the victimizer of our members was the state itself.”

While this move away from the state and towards a more critical perspective allied *Paso del Norte* with the members of the RedTDT and other human rights organizations, their relatively late shift to doing human rights work meant that they had limited capacity. They had minimal international contact, and only in in 2010, after an organizational restructuring undertaken with the assistance of Mexico City-based human rights organizations, did they start to view political work, or *incidencia*, as important to their mission. Even then, they viewed their political work as pressuring politicians and legislators, not judicial actors. They did not build relationships with and hold meetings with state actors like their colleagues in Nuevo León or Coahuila. This was partly because of their emerging beliefs that the state was responsible for violence, but it also had to do with their limited capacity: they had very few cases.

As part of their shift in perspective and strategy, in 2009 *Paso del Norte* joined with other groups in Juárez to confront the growing crisis of violence in the city. These organizations, working around the diverse themes of children’s rights, the provision of health care, electoral rights, and human rights, came together around their shared concern of how to confront violence in Juárez and called themselves the *Grupo de Articulación Justicia Juárez*, the Justice Articulation Group of Juárez.⁹⁸ They decided that they had

⁹⁸ In 2013, a member of the Grupo de Articulación listed 18 members, all of whom are NGOs and not explicitly aligned with any political party. The groups included Casa Amiga, Grupo Compañeros, Comité Médico, Red de Nuestra Infancia, Consejo Ciudadano, Centro por la Infancia, OPI, Comité Mexico Ciudadano, SiMAP, Paso del Norte.

three central beliefs in common: the need to demilitarize the city; the importance of justice and truth around violence,⁹⁹ and improving governance. They began to reach out to local, national and international groups, and together, they began to plan events.

President Calderón came to Juárez for the first time in his administration in 2010. He had avoided coming during the first two years of his administration even as Juárez descended into violence, but was finally drawn to the city in February, 2010, in the wake of the Villas de Salvárcar massacre mentioned in Chapter One, in which 18 high school students were killed at a party. Calderón had initially stated that the massacre resulted from gangs settling accounts among them, which later proved false, provoking anger and a political outcry from the families and the city of Juárez. Calderón arrived and convened a meeting amongst Juárez's civil society, calling it *Todos Somos Juárez: Reconstruyamos la Ciudad*; We Are All Juárez: Let's Rebuild Our City. He asked different sectors of Juárez civil society to come together to engage in dialogue about how to deal with the violence overwhelming the state, and civil society organizations were broken up into different working groups.¹⁰⁰ There was a working group on human rights that was invited to this first meeting.

At this first historic meeting between President Calderón and Juárez civil society members, two notable things happened: first, a representative from *Paso del Norte* read a

⁹⁹ What they wanted with this demand was a full reporting on the cases that have been reported as well as the context of the commission of the crime, and the judicial status of the cases.

¹⁰⁰ The *Todos Somos Juárez* program would pledge \$270 million to complete 160 different programs in Juárez, including renovating schools and hospitals, and paying for student breakfasts, a youth orchestra, anti-violence training and drug treatment centers (WOLA 2010: 12).

scalding statement from the human rights working group blaming the military for the horrifying violence in Juárez. Second, Luz Dávila, a mother of two of the teenagers killed in the Villa de Salvárcar massacre, told President Calderón that she could not welcome him to Juárez, because “Juárez is in mourning.” These statements reflected the emerging consensus beliefs of human rights groups in Juárez: that the state could not be productively engaged with because of its participation in and authorization of violence. As a result of these critical comments, in the next *Todos Somos Juárez* meeting 15 days later, the President excluded the human rights coalition: they were denied entry at the gate of the meeting. For the Juárez and Chihuahua human rights community, this was a defining moment. They saw this as an aggressive stance by the government, and declared that this would be the end of dialogue with the Calderón administration. They had been summarily excluded from dialogue with the government, and going forward they would harden their stance and broaden their repertoire of contention.¹⁰¹ Whether they had precluded access with their critical stance, or whether Calderón had shut off any possibility of access no longer mattered: the advocate route was closed in Juárez. Since Paso del Norte was just emerging, this confrontation with the President deterred any state-level actors who may have been sympathetic to the plight of the human rights community to collaborate with this now publicly excluded group.

During this time, several of the Juárez groups were in close contact with Mexico City-based organizations, including SeraPaz and Serpaj, both of which were key MPJD

¹⁰¹ Hunger strikes, for example, would become common: in January 2011, there was a public fast against the violence in Juárez organized by these groups on the anniversary of the Villas de Salvárcar massacre. Another fast is initiated in February in response to the enforced disappearance of several human rights activists.

allies.¹⁰² In the spring of 2011, these relationships became politically key: when Javier Sicilia's son was killed on March 28th, 2011, leaders of these organizations called the Juárez-based organizations, including representatives of Villas de Salvárcar, and asked them to come to Cuernavaca in solidarity. The groups obliged. When the MPJD was born, in the April march from Cuernavaca to Mexico City, these groups were present. Olga Reyes, a prominent Juárez-based activist who is from a family of human rights activists that has lost six family members to the violence of the city, read the MPJD's mission statement in downtown Mexico City to launch the Northern Caravan.

When Sicilia and others members of the MPJD proposed ending their first caravan in Juárez, which MPJD leaders chose because it was the place that had suffered most from the violence, the groups there were at first pleased with the idea of bringing the spotlight of the nation onto the violence they were experiencing. They had two conditions, however, for the Caravan. First, there would not be a dialogue held with governmental authorities. Second, the Caravan would need to call for the immediate demilitarization – the removal of the Mexican army - from Chihuahua. As one member of the planning committee stated:

We told him [Javier] that this wasn't the place for dialogue with authorities – we told him that we were at a point where we wanted to call for an immediate end to militarization. So we thought that this was the agreement – that the Caravan would come, but that it was clear that here we didn't want to have the fight over [these basic understandings].

The MPJD seemed to agree with this, and the intensive planning effort to host the caravan commenced. To prepare for the caravan, the nascent Articulation Group

¹⁰² The leaders of these organizations helped facilitate reflective processes in several Juárez-based organizations, including *Paso del Norte*.

members made a strong effort to bring together a very broad coalition of organizations, including another coalition group, the Frente Plural (the Plural Front).

On June 10th, 2011, 77 days after the assassination of Javier Sicilia's son, the Northern Caravan arrived in Juárez. The 500 or so caravan participants were met by at least as many locals, and together they engaged in two intensive days of reflection and drafting of a new citizens' pact. The caravan had begun in Mexico City with a reading of six points that Sicilia and other MPJD leadership had drafted.¹⁰³ The Juárez reflection, the MPJD and the participants hoped, would modify this basic pact, making it more democratic and inclusive of the many constituencies that had participated in the caravan. As more than 1,000 people worked on a joint statement, the result was somewhat predictably chaotic: a document containing 460 points was read on June 11th, presenting tenets that were much more anti-government – much less *besos* and *abrazos* - than Sicilia had ever been. Most importantly, this document called for the immediate withdrawal of the Mexican army from Chihuahua – a demand that had been central to the Juárez coalition groups, but not of the MPJD. The next day, in an impromptu press conference just across the border in El Paso, Javier disavowed the new document. He was quoted as saying that he didn't like the document the group had produced, and that the MPJD would henceforth pursue the goals set forth in the initial pact. This pronouncement angered and alienated many of the assembled groups, and destroyed the relationship among the Juárez organizations: the

¹⁰³ The original points of the pact were: 1 Exigimos esclarecer asesinatos y desapariciones y nombrar a las víctimas; 2 Exigimos poner fin a la estrategia de guerra y asumir un enfoque de seguridad ciudadana 3 Exigimos combatir la corrupción y la impunidad; 4 Exigimos combatir la raíz económica y las ganancias del crimen; 5 Exigimos la atención de emergencia a la juventud y acciones efectivas de recuperación del tejido social; 6 Exigimos democracia participativa. See: <http://movimientoporlapaz.mx/documentos-esenciales-del-movimiento/pacto-nacional-por-un-mexico-en-paz-con-justicia-y-dignidad/>

Popular Front would never again speak to the Articulation Group, and the Articulation Group's position as coalition leader and viable activist organization would be undermined. For Juárez, a city in the midst of a terrible wave of violence, the MPJD's presence weakened their legitimacy and organizing capacity – something they could ill afford.

3. Chihuahua City: Steady Building and Cooperation

For organizations in Chihuahua City, the arrival of the MPJD Caravan did little to change the dynamic between local organizations. While Juárez civil society had emerged from the period of femicides exhausted, Chihuahuan civil society was able to adapt to changing political contexts and emerge with several strong political actors capable of receiving the Caravan without significant strain. Prior to the arrival of the Caravan, a division of labor emerged between the largest social movement and human rights organization in the city, The Center for the Human Rights of Women (CEDEHM), and the largest victim-led organization, *Justicia para Nuestras Hijas*. CEDEHM ably occupied the activist role, litigating paradigmatic cases and providing a highly professional, consistent critique of state government and their failure to impart justice, while the *Justicia* occupied an advocate role, bridging relationships between the state and family members of victims of disappearances. The relationship between these organizations began in 2002, and by 2011, when the MPJD Caravan arrived, these relationships between civil society actors, and between these actors and the state, were solid enough to use the MPJD's visit to their benefit and to avoid it being disruptive.

As in much of the country, in the 1990s civil society mobilization in Chihuahua City centered around economic issues. The *Barzón* movement was founded by Mexican citizens protesting the unjust structuring of individual debt.¹⁰⁴ In Chihuahua, this movement took hold, and would come to be a political force acting on behalf of a diverse array of groups, including indigenous communities,¹⁰⁵ those working against mega-projects and the right to water, and those working to protect human rights. Luz “Lucha” Castro, who was a co-founder of El Barzón, joined with Norma Ledezma to found *Justicia para Nuestras Hijas* in 2002,¹⁰⁶ and in 2005 would go on to found CEDEHM.

When *Justicia para Nuestras Hijas* was founded, in 2002, the first cases it advocated for were not successful. This was due partly to the lack of resources: Ledezma was still working full time in one of Chihuahua’s many maquiladoras, and there was a tense and not functional relationship between the organization and the government. In order to get a meeting with the governor or the Attorney General, protests and marches were still necessary. This began to shift in 2007. Ledezma and the other families were by this time frustrated and exhausted by the lack of judicial successes they were having. The ongoing international pressure to solve femicides resulted in the Governor bringing in two outside

¹⁰⁴ Many Mexican middle-class citizens had borrowed money in dollars, and were expected to pay the money back with the rapidly deflating peso, in effect multiplying their debt many times over.

¹⁰⁵ COSYDDHAC, la Comisión de Solidaridad y Defensa de los Derechos Humanos was founded in the 1990s, and in that time period was very active in defending indigenous rights. While its capacity has diminished since then, they often accompany and lend their name recognition and legitimacy to CEDEHM and other human rights organizations at meetings with government officials.

¹⁰⁶ Her introduction to Norma Ledezma occurred in March of 2002, as Norma was refusing to leave the governor’s office until he agreed to meet with her. When the governor finally summoned Norma, she was told that her meeting was conditional on her leaving Castro outside. Though Norma didn’t know Castro, she thought “if the governor is saying she can’t come in, then she must be someone who makes an impact.” On the spot, Norma declared that Castro was her lawyer, and therefore would be accompanying her to the meeting (Ledezma Interview, March, 2013).

experts to review the case files of the disappearances of women.¹⁰⁷ The experts, trained in Chile and Colombia in forensic science and investigation, sat down with Norma and taught her not only how to read a case file, but what actions to ask state authorities to take in order to solve the cases, and how to look for investigatory leads.¹⁰⁸ The experts advised Norma that through this methodology they thought the Attorney General's office really would be able to solve cases – but that she needed to do the work of analyzing and advocating cases full time.¹⁰⁹

Following this visit, Ledezma did indeed leave the maquiladora, and in her words, she started to “live” in the *procuraduría*, the office building that houses the investigators and courts in Chihuahua City.¹¹⁰ Using the training she had received, she began to analyze case files in a much more rigorous way than before. She asked for and received monthly meetings with the prosecutors, and in these meetings they began to review cases in detail. She also began, again in her words, to “give instructions” to the investigators as to how to advance investigations and follow leads. In 2011, the informal structures and relationships that Ledezma had nurtured were institutionalized with the creation of yet another Special Unit, this one named the *Unidad Especializada en Femicidios y Delitos de Género*, the Special Unit in Femicides and Gender Crimes. Unlike other units, however, Ledezma selected all of the staff and investigators. In all, she selected 27 employees to be designated to this unit – with the agreement that these investigators,

¹⁰⁷ *Justicia* also has engaged in international litigation, working together with CEJIL and the CMDH.

¹⁰⁸ See “Nuestras Hijas piden ampliar contrato a expertos forenses,” 11/12/07. <http://www.cimacnoticias.com.mx/node/49246>

¹⁰⁹ According to Ledezma, the experts, Raúl Jofre y Pedro Díaz, told her “No hay otra; tienes el liderazgo;” No one else can do this – you are in the leadership position.

¹¹⁰ One of *Justicia*'s employees estimated that Ledezma spends 90% of her time in the *procuraduría*

psychologists and administrators would devote all of their time to working on the cases that *Justicia* presented to them.

This approach to pursuing justice was not just innovative, it opened a new paradigm of state-civil society relations. Lucha Castro summarized this contribution as follows:

The most important contribution of *Justicia* to the whole issue of feminicides in Ciudad Juárez and Chihuahua, and even in the country, was that victims' relatives had been protesting and denouncing for years that the authorities were not doing their job, that they were not investigating, but they had not been able to prove that. [...]. Hence, we began requesting a simple copy of the investigation files, and there was a law that forced them to give it to them. [...] For example, in one case, a girl had been missing for two years and they the authorities had claimed to the mother that there was a full investigation going on in her case. When we got the copy of her file, after two years of investigation, they submitted to us a file with only seven pages. It consisted of the missing report, a request for the police to investigate, and the testimony of the girl's sister. That was it."¹¹¹

While *Justicia* was building relationships with state investigators and increasing its own capacity as an advocate, Castro had moved on to found CEDEHM. CEDEHM shares offices with El Barzón, the organization Castro had co-founded in 1994, and the leadership of the two organizations is made up of the same core of seasoned organizers and activists. The two organizations share many political inclinations – both target the state as the primary rights violator of human rights, and consider that the state has the responsibility to rectify the diverse set of rights violations that the organization documents. As one investigatory complained to me, “we have had meetings with CEDEHM and El Barzon in one week: on Monday, we discuss the protectionary measures [issued by the IACHR]. On Tuesday, we talk about environmental rights. Wednesday, indigenous rights. Thursday, the right to housing.” CEDEHM was founded

¹¹¹ V Michel interview with Lucha Castro in Chihuahua, Mexico, January 28, 2010.

with the standard human rights ideational framing discussed in chapter three, though it focuses particularly on women's rights. It adopted many of the practices of the leading human rights organizations in Mexico: strategic litigation of paradigmatic cases, including litigation in the international arena; an exclusive focus on the human rights violations committed by state actors; and rigorous documentation of rights violations. Unlike other organizations, CEDEHM is more holistic in its approach, providing counseling, group therapy, and educational workshops around themes of sexuality and rights.

Justicia and CEDEHM/El Barzón do not fundamentally agree with each other. While they spoke of each other respectfully, in interviews they were clear that they had critiques of the other's strategy. A representative of CEDEHM/El Barzón told me that Ledezma was doing something very politically dangerous by working so closely with the state – hinting that she was leaving herself open to charges of corruption and of selling out. Members of *Justicia* were more guarded in their comments, but they made it clear that they considered any strategy that wasn't laser focused on judicial progress was not serving the will and needs of victims. Despite these differences, these organizations have worked out a division of labor. If a case of a disappearance comes to CEDEHM in which the state is not involved, they send the case to *Justicia*. While *Justicia* did take on cases of disappearances of men from 2010-2012, they now are at capacity, and so if a case of a disappearance of a man arrives at *Justicia*, they told me that they would consider sending it to CEDEHM.

In 2011, this working relationship was well established, and it was this coalition of organizations that would receive the MPJD Caravan. Since the members of this coalition had already developed independent relationships with the government, they did not need the type of brokering that the MPJD provided in Monterrey. One El Barzón leader told me “For us, we already had sufficient political presence to obtain a meeting with authorities when we needed to. So we didn’t need the MPJD to play this role.” The reception of the Caravan, then, was carried out by organizations who saw the need to act in solidarity with this new national movement, but who did not join the MPJD. The coalition members maintained their individual strategies regarding dialogue with the government.

While the MPJD was not directly counter-productive in Chihuahua City and may have even had some positive impacts, it did negatively impact regional organizing that the Chihuahua City organizations had been involved with. The MPJD divided a burgeoning network of victim-led and human rights groups from these three northern states. All of the groups I have discussed in this chapter from Nuevo León, Coahuila and Chihuahua had begun to meet together as the *Red del Norte de Familias Desaparecidas*, the Northern Network of Disappeared Families, in 2011, and they had held four meetings prior to the MPJD Caravan. Because of differences over whether to join the MPJD, however, with CADHAC opting to join the MPJD and FUUNDEC opting not to, this nascent collaboration was halted.

D. Summary

Advocate groups emerged when given access by state actors, and when they believed that interacting with the state would be productive. The MPJD, in the case of Nuevo León and Coahuila, facilitated increased access to state actors. However, due to the difference in beliefs of groups in these two states about the nature of the state, in Nuevo León advocates emerged, while in Coahuila the local group remained an activist. In the state of Chihuahua, early movements against femicide garnered Juárez-based groups international access, but that access to state officials was not a priority. When the new wave of violence occurred in Juárez, the weakened groups had neither access to state officials nor coherent beliefs about the state, and the MPJD drove a splinter through the emerging coalition of activist groups. In Chihuahua City, on the other hand, local groups used the international visibility of violence against women to strategically obtain access to state officials. Though groups in Chihuahua City differ in their core beliefs of the state, solid activist and advocate groups have emerged.

With this typology of activists and advocates established in these four locations, in the next section I will turn to my second question: how and why does the presence of activists and advocates matter for determining judicial success? To answer this question I first review the general indicators of justice in Mexico and compare these to the judicial results achieved by the groups discussed in this section. Finally, I move onto a discussion of the mechanisms driving these outcomes. While in this section many of the activities that advocates and activists engage in look similar from the outside, the important distinction comes from looking under the surface: is the state collaborating with non-state

actors around strategies to move cases forward, or is there fundamental antagonism and distrust? Is the access granted fleeting or deep? These questions are best answered by looking at the results that activists vs. advocates obtain.

III. The Uneven Provision of Justice: Advocates, Activists and the State

At certain critical junctures, social actors can alter the existing status quo by taking advantage of opportunities for action.

- Peruzzotti; Smulovitz, 2006

A. Judicial Outcomes: Descriptive Statistics

As briefly discussed in the opening chapter, it is rare for cases to proceed through the justice system in Mexico. The vast majority of cases are not investigated, much less brought to trial.

Figure 4.1 Judicial Outcomes: Mexico Homicides

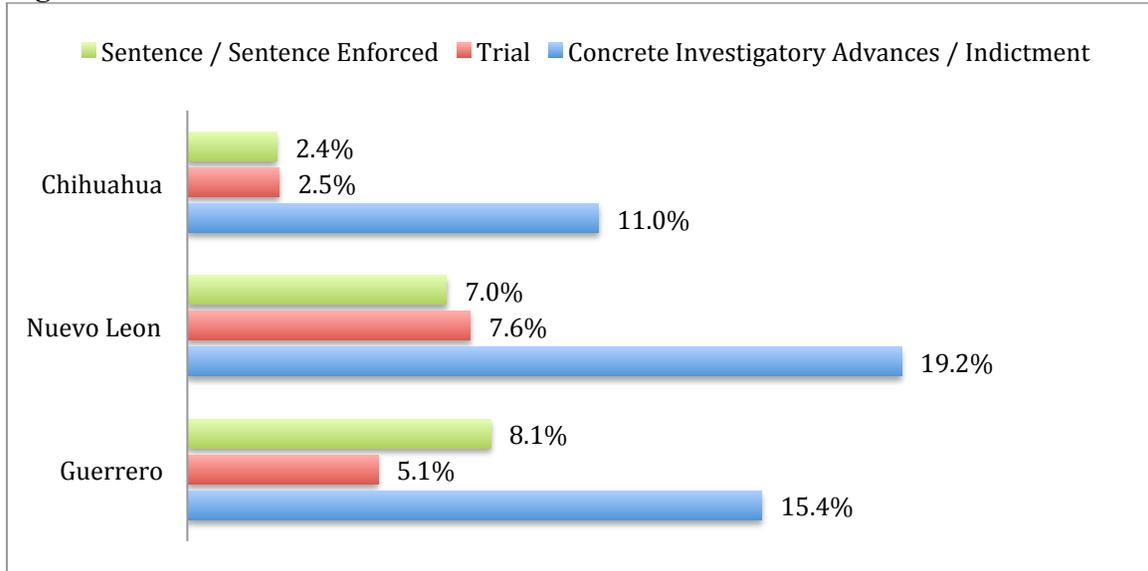
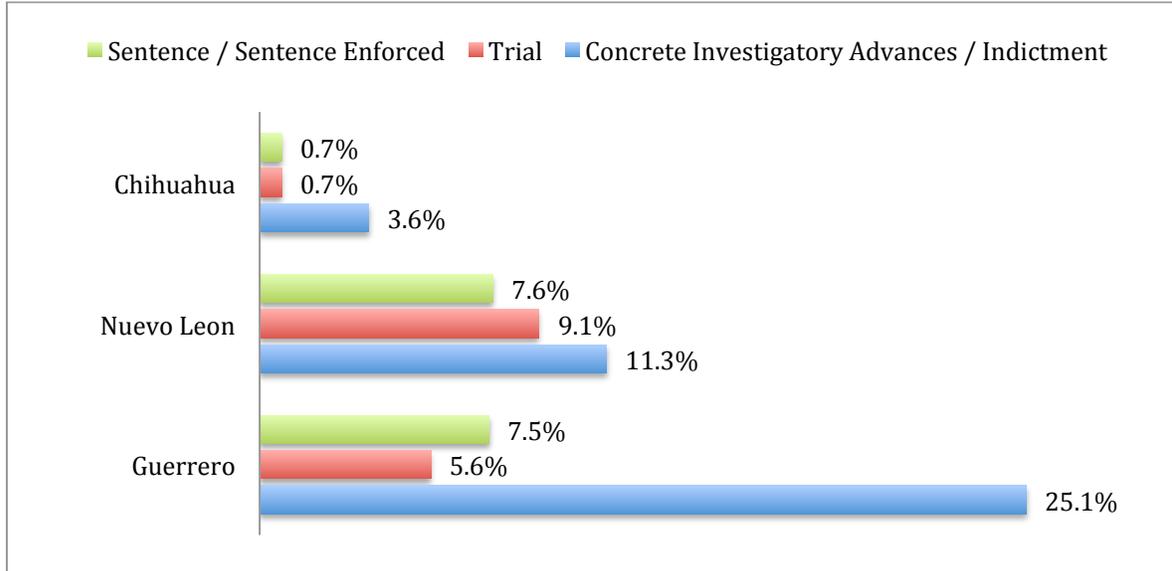


Figure 4.2 Judicial Outcomes: Mexico Disappearances



Source: Original Database compiled from information requests to State Attorney General's offices and Courts

Human Rights Watch reported in October 2014 that “between 2006 and 2013, authorities opened 99 criminal investigations for the alleged crime of enforced disappearance at the federal level, and 192 at the state level. During this time, only six people were convicted for the enforced disappearances of seven victims, all of these involved cases that had occurred before 2006.¹¹²” That is, consistent with my findings, not a single person has been sentenced for the crime of enforced disappearance, though there are perpetrators sentenced for other crimes associated with the broader category of disappearances (kidnapping, illegal deprivation of liberty).¹¹³

Despite this overall weakness in the provision of justice, some cases do have judicial success. I argue in Chapter One that civil society mobilization explains much of why

¹¹² ‘Disappearances’ Response Falls Short: Inexplicable Delays, Contradictory Statements, Limited Results. Oct 8, 2014. Accessed 10/13/14: <http://www.hrw.org/news/2014/10/08/mexico-disappearances-response-falls-short>

¹¹³ For a detailed discussion of the categories included in “disappearances,” and a discussion in state-level variation in reporting and enforcement, please see Appendices B and C.

certain cases proceed through the justice system. In this section, I examine why some civil society organizations discussed in the previous section are more successful in achieving justice in the cases they advocate for than others. In my study of three states hard hit by violence in Mexico's northern border region, I find significant variation in the judicial results obtained by the victim advocate organizations, with FUUNDEC, located in Coahuila, obtaining a relatively low level of justice, CADHAC in Nuevo León obtaining a relatively moderate level of justice, and *Justicia para Nuestras Hijas* located in the City of Chihuahua achieving a relatively high level of justice. Though *Paso del Norte* in Juárez was discussed in the previous section, I exclude them from the analysis here because they have taken on only a few cases, and are only just starting to litigate on their behalf. I determined "relative provision of justice" with three numbers: first, the percentage of cases of disappearance and/or homicides advocated for by the organizations that result in indictments; second, the percentage of cases that result in guilty sentences; and third the percentage of cases in which somebody who has been reported as disappeared is found:

Figure 4.3: Relative Provision of Justice by Organization

Organization	Justicia para Nuestras Hijas	CADHAC	FUUNDEC ¹¹⁴
State	Chihuahua	Nuevo León	Coahuila
Relative Provision of Justice	High	Medium	Low
% of cases w/indictments	23%	21%	0% to 5%
% of cases w/guilt sentences	12%	6%	0%
% of People found	57%	16%	-
# of cases advocated	105 over 5 yrs	202 over 2 years	290 cases registered since 2010

I attribute this variation in the provision of justice primarily to the beliefs and access of the civil society organizations, and find that the presence of both advocates and activists at the judicial decision-making site is key to producing positive judicial outcomes:

Figure 4.4 Activists, Advocates, and the Provision of Justice

Organization, City	Social Movement Actors Present	Relative Provision of Justice
<i>Justicia/CEDEHM,</i> Chihuahua City	Advocate/Activist	High
FUUNDEC, Coahuila	Activist	Low
CADHAC, Nuevo León	Advocate	Medium

¹¹⁴ Members of FUUNDEC’s leadership team have told me in multiple interviews that there are no indictments or sentences in the cases that they have worked on. One lawyer who has been in their dialogues with the government said he remembered 1 or 2 cases in which indictments had been issued, hence the 0 to 5% estimation. In the cases of the other organizations, the figures were arrived at after reviewing the results of the cases they manage one by one, and the figures were up-to-date as of Feb 1st, 2013.

B. Mechanisms and Processes that Drive Judicial Outcomes

I have claimed that advocates engage in various activities that lead to improvements in judicial outcomes. What exactly are these activities, and what do they look like in practice?

1. Collaborative Investigation

In both Nuevo León and Chihuahua, investigating cases is no longer undertaken solely by state agents. Rather, a form of collaborative or participatory investigation has now become the norm for cases that have been taken up by CADHAC, in Monterrey, and *Justicia*, in Chihuahua City.

Since July of 2011, CADHAC has held 13 meetings with the State Prosecutor's office to review the case files of 58 cases of disappearances and murders. While there had been meetings between victims' relatives and state investigators before, the meetings between the family members of victims of disappearance and state officials had a different dynamic from the start. As promised during the meeting with the Caravan in June 2011, the State Attorney General oversees these meetings himself, and brings with him a team of investigators and prosecutors. This team includes nearly every state official involved in the investigation: the local police, the judicial police, the prosecutor assigned to the case and their staff, and at times the Assistant State Attorney General and State Attorney General. Officials from the National Attorney General's Office are also present at most meetings, and until ProVÍctima, the national agency charged with attending to victims of drug-related violence closed in 2014, their representatives were there too.

At these meetings, a collaborative investigative methodology has evolved: the family members of victims, the CADHAC or MPJD lawyers, and the assembled state investigators discuss the status of the case. Together they review evidence, suspects, and possible investigatory leads, and then agree on concrete investigative steps that need to be taken by the investigatory team, and sometimes the victims, to advance the case. They discuss things like who the victim may have talked to on the date of their disappearance, and how to locate that person. At subsequent meetings, the investigative teams and the victims reviewed which tasks that they discussed have been completed, what they yielded, and then together, though usually led by suggestions of the victims and lawyers, they proposed the next steps to be taken in the investigation.

In Chihuahua City, this collaborative investigatory methodology is less formal. Though Ledezma has at least one other lawyer on staff, she personally serves as the advocate and interlocutor on every case. She meets with the family member of the victim in each of the 58 cases currently on Justicia's list at least once every other week, and calls different members of the state whenever she needs to. Ledezma is in personal contact with the State Attorney General, and has also built relationships from the bottom to the top of the state's security, judicial and incarceration hierarchies. When a person comes to her reporting a disappearance of their daughter,¹¹⁵ she establishes the date and time of the event and the basic circumstances. If the disappearance is recent, she calls for an immediate emergency meeting of the relevant police, state judicial investigators, and, when relevant, federal police and/or military. These officials, under Ms. Ledezma's

¹¹⁵ *Justicia* currently only accepts cases of disappearances of women. From 2010-2012, they accepted cases of male disappearances as well, but stopped accepting new cases when their organizational capacity prohibited it.

leadership, then devise an investigatory plan, and “basically, we [*Justicia*] give them instructions”¹¹⁶ about how to proceed and coordinate the investigation. She has also built relationships with the telephone companies, and is able to quickly obtain the cell phone records and GPS information (when the phone has this capacity), an often key piece of evidence at this early stage of the investigation which normally takes state investigators a long time to obtain.

In both Nuevo León and Chihuahua, basic investigative steps – talking to witnesses, obtaining cell phone records, submitting information requests to all prisons and hospitals looking for the disappeared person– had been taken in very few of the cases before these advocates took on these cases. Even the taking of these basic steps has meant that every case taken up has “advanced” in terms of the investigation from where it began.

2. Rapid Response

In addition to the collaborative investigations, an important but difficult to quantify role has emerged for both CADHAC and *Justicia* - that of rapid responder. Ledezma folds her rapid response into her case advocacy methodology, and because she has formed relationships with members of the state’s judicial bureaucracies at all different levels, she calls the relevant actors in the case of someone who has just been disappeared. While Ledezma told me about this methodology, I had the opportunity to witness CADHAC’s rapid response on multiple occasions during the more than two months I spent at the organization. A person would arrive reporting that their family member had been detained or disappeared. On one occasion, a teenager was caught with marijuana and

¹¹⁶ Interview with Norma Ledezma, April, 2013.

detained by police. For several hours following his detention, it was not clear where he had been taken. Calls to various authorities yielded confusion, and as the teenager's mother knew that many cases of forced disappearance begin with confusion as to a person's whereabouts after being detained, she immediately placed a call to Sister Consuelo. She knew Sister Consuelo because her sister's son had been disappeared several years before, and she had participated in CADHAC's mobilization and advocacy activities. Upon receiving the call, Sister Consuelo immediately called the Prosecutor's Office, while CADHAC's lawyers called the different police stations and military installments asking if the teenager had been detained. After nearly four hours, the teenager was located at a police station, where he had arrived after receiving a medical exam conducted to establish his use of marijuana, and released into the custody of his mother and aunt.

On another occasion, I was in Sister Consuelo's car when we witnessed a municipal police car detaining a group of three migrants. When Consuelo stopped and asked them why they were detaining the men, the police said for public intoxication, which is a misdemeanor and does not merit incarceration in the state of Nuevo León. Sister Consuelo pointed this out to the commander, and made it clear that she was taking the names and license plate number of the patrol cars. She then placed a call to the Attorney General, and had the CADHAC lawyers follow up the case the next day. They were released later that evening. While there is of course no proof that these young men would have been disappeared had CADHAC and Sister Consuelo not been involved, it is safe to conclude that CADHAC's intervention and the Attorney General's responsiveness sends

an important signal that disappearances will not be met with indifference from the citizens and the state. While CADHAC documents the cases of all people who come to their offices, they do not statistically report cases in which they intervened to ensure that a disappearance did not take place. I estimate at least several dozen cases have been resolved in this way in the past year alone.

3. Activist/Advocate Dynamic

I posit that activist/advocate dynamics are more productive in achieving judicial success than advocates alone. Why is this? As CADHAC (an advocate without a local activist group) has experienced the benefit of working closely with the state, it has raised the stakes of preserving its close relationship with state actors. The State Attorney General's office has indicated privately that betrayal in the press will undermine or end this relationship, and CADHAC has been put in an untenable position. On the one hand it needs to carefully preserve its relationships with state actors: the family members of victims its represents want their cases to go forward and see this space as crucial. However, as investigations stall, victims become frustrated, and as CADHAC receives ever more cases of torture at the hands of state agents, it is in its organizational mandate to denounce these deficiencies and problems in the state investigative structure. Being hamstrung between these competing responsibilities has created internal and external conflicts for the organization, and I would argue, limits it from being as effective as it might be in either of these two key roles.

In Chihuahua City, in comparison, CEDEHM and Justicia complement each other's efforts. State officials admitted in interviews that Chihuahua is under intense local,

national and international pressure to produce judicial results, especially in cases of violence against women. CEDEHM has been the leader in imposing a political cost to impunity: since their founding in 2005, CEDEHM has had the loudest and most critical voice in the city of Chihuahua demanding that the state provide justice to all victims of violence. CEDEHM has become known in international and national circles, and in interviews and during meetings I heard state agents express deep frustration of the unrelenting critique of CEDEHM. *Justicia*, though also critical of injustice and the state, has been able to seize the political opening that CEDEHM¹¹⁷ and others' critique created. After Chihuahua became internationally known for its appallingly high rates of femicide, largely due to the work of civil society organizations in both Ciudad Juárez and Chihuahua and their international allies, it needed to produce evidence that it was doing something to solve the problem. Collaboration with *Justicia* has allowed it to credibly make that claim.

4. Pressure by International Actors

When I walked into Vito's office, one of the four state coordinators of investigations in Nuevo León, he had the recently issued Human Rights Watch report on Enforced Disappearance in Mexico pulled up on his computer screen. He was complaining that though the report had gotten most things right, it hadn't fully recognized his personal roll

¹¹⁷ Those familiar with the groups in Chihuahua may fault this analysis for over-emphasizing CEDEHM's role relative to the many other feminist and victims' advocacy organizations in Chihuahua. I focus on CEDEHM because of their physical presence in the city of Chihuahua, their location within El Barzón (an important and powerful local social movement focusing on a variety of land and labor causes), and the prominence of their leaders Lucha Castro and Gabino Gomez in local, national and international media and institutions. Additionally, because I am only considering cases filed after 2006, and am especially interested in the judicial developments since 2008 when Norma Ledezma became a full-time advocate with *Justicia*, my interviews did indicate that CEDEHM was the most important victim advocacy group in Chihuahua at this time.

in moving a certain case forward in the justice system. He wondered if CADHAC could help him fix the error in the report. This underlines two important mechanisms by which international actors influence local judicial processes: (1) local judicial investigators are increasingly attuned to the reputation costs of their actions in the international arena, and (2) they understand implicitly that local organizations are not only part of a larger human rights network – but that what the local organizations say holds weight with international actors. In other words, as I talk about explicitly in Chapter Seven, they understand that information flows up to the national and international level from the local organizations.

In this chapter I have primarily talked about the presence of international state and non-state actors as facilitators of political access. They also, however, are important in providing legal tools and ongoing political legitimation for local organizations. For example, in Chihuahua, CEDEHM holds regular meetings of state judicial bureaucrats to monitor the implementation of protective measures issued by the IACHR. CADHAC receives regular visits from the Office of the UN High Commissioner for Human Rights, Human Rights Watch and other transnational human rights advocates, and when CADHAC launched an ultimately successful campaign to make enforced disappearance illegal in Nuevo León, most of these actors came in person to Nuevo León to make the case to state legislators and the governor. Most of these organizations also regularly send cases that show evidence of state involvement in a disappearance to the UN Special Rapporteur on Enforced Executions (UNSREF).¹¹⁸ Human Rights Watch has been a

¹¹⁸ CADHAC sent 67 cases as of March, 2013. While 33 of the 67 cases CADHAC sent to the UNSREF were accepted, meaning a formal complaint was made by the UNSREF to the Mexican government, CADHAC didn't expect or receive any concrete results from these reports. They stated that they reported to the UN in order to provide documentation of state-perpetrated crimes, not because they thought that this

particularly important ally of CADHAC, and CADHAC and the meetings with the Attorney General's office were featured as "the most hopeful sign we have seen in the Mexican justice system" in HRW's 2012 report. HRW's top researcher was in regular contact with Sister Consuelo, and traveled to Nuevo León multiple times, both to observe the meetings with the Attorney General's office, and to push for the law on enforced disappearance. As one prominent human rights leader in Mexico City commented to me, international human rights organizations and intergovernmental organizations have provided consistent support to all of the organizations I discuss in this chapter, with the exception of Paso del Norte, the nascent Juárez-based human rights organization. The net effect is, as I posit in the Judicial Breakthrough Model (Ch. 1), is to strengthen the political power that local organizations can use to access and interact with state officials.¹¹⁹

IV. Conclusion

The question of how to make the justice system work is a daily, pressing question for many citizens who live in violent societies, especially those in which the right to life is not reliably guaranteed by the state. Drawing on the experiences and strategies of victim advocate organizations along Mexico's violent northern border, in this chapter I responded to two questions: Why do activists and advocates emerge in some local contexts and not others? And how and why does this matter for determining judicial success? I argued for the importance of understanding both access to state officials and

reporting would help them achieve concrete judicial results. CADHAC had done this before the MPJD caravan, and continued to do so after.

¹¹⁹ He critiqued these international organizations for merely supporting, and not thinking critically and creatively about how to transform the current situation.

beliefs of organizations in constituting advocates and activists. I presented evidence that the presence of activists and advocates at the judicial decision-making site results in greater relative judicial success, while advocates only leads to a moderate relative judicial success, and activists only results in low relative judicial success. I isolated several mechanisms that underlie the success of advocates: collaborative investigations, rapid response capability, the activist/advocate dynamic, and pressure from international actors.

This chapter also presents the failed case of transnational activism to improve justice in Ciudad Juárez. The Boomerang Theory would lead us to think that immense international attention focused on femicides in the state of Chihuahua in the early 2000's would lead to improved state human rights behavior – including judicial outcomes in cases of egregious human rights abuses. I argue that this case illustrates the underspecified mechanisms of the boomerang, and that we need to look at civil society actors' relationships with each other and with state actors located at the judicial decision-making site to explain why Chihuahua City organizations emerged from this period with the capacity to confront the onslaught of violence during the Calderón administration, while Juárez organizations were weak and overwhelmed.

Chapter Five

Colombia: The Impossibility of Civil Society as Advocates in the Context of War

I. Introduction

The Colombian government has been engaged in a civil war for the past 50 years with various armed groups, most importantly the FARC, the *Fuerzas Armadas Revolucionarias de Colombia*, the Revolutionary Armed Forces of Colombia. While the federal government has waged war against internal leftist threats, an elite-dominated political system has overseen the consolidation of an economically, militarily and politically centralized and relatively efficient state. The human rights community in Colombia has emerged in the context of war, elite-dominated politics and high levels of violence – and struggled to carve out an identity distinct from the armed insurgency. Within the polarized context of civil war and counterinsurgency, the centrally organized government has precluded the possibilities for Colombian civil society to form advocate relationships with Colombian officials, relegating all Colombian human rights organizations to activist roles.

Colombian civil society mobilization against violations of the right to physical integrity go back to the 1960s. Historically linked to the armed left, these mobilizations – some of which targeted impunity – were unable to produce significant breakthroughs in judicial results until the false positives scandal, which will be discussed in the following chapter. This failure to win judicial results was due to the political impossibility of an insider advocate to establish a working relationship with the state. NGOs believed throughout

this time that the government was targeting them – that is, those who should have been in the position to be insider advocates were themselves the targets of government-sponsored persecutions and executions.

Unlike in the Mexican case, the Colombian state behaves much more as the unitary actor that many political scientists imagine. Though there are exceptions and few observers would regard the Colombian state as the Weberian ideal, local state officials most often hue close to the orders and interests of their Bogotá bosses. Even paramilitaries, the non-state actors responsible for approximately 80 percent of the violence in Colombia, often respond to the command control of the military, targeting people hostile to the interests of the state, and avoiding harming state allies and those who would impose a political cost to the state (very few internationals, for example, have been targeted by paramilitary forces).

This comparative state coherence, relative to Mexico, makes the history of human rights activism in Colombia a more linear story in regards to how organizations relate to the state. Complicating these dynamics, however, is the very different ways that social movements and civil society negotiations have negotiated their relationships with the armed left. In this chapter I trace the emergence of NGOs and social movements who focus on holding the state accountable for violation of the right to physical integrity. I detail their successes in a small number of cases, and highlight their different relationships with the FARC and other illegal armed actors, including the paramilitaries.

II. Historical Context

A. Political Context: Violence, Exclusion and Insurgency

Prior to the start of Colombia's civil war in 1964 the country experienced a famously brief but bloody period. *La Violencia* (1948-1958) that would continue to influence politics throughout the 20th and 21st centuries. *La Violencia* was a partisan war during which the political rivalry between the Liberal and Conservative parties erupted into brutal partisan violence that killed an estimated 200,000 people. While there are different explanations for *La Violencia*, it is generally accepted that the state's well-developed, centrally-controlled patronage network was the root cause: jobs, contracts, and numerous other benefits reliably shifted according to which party controlled the presidency, provoking fierce competition and party loyalty among each party's supporters.

The Liberal party had begun to move away from a purely clientilistic base and closer to a mass party organizational model immediately before *La Violencia*. Programmatic ties with organized labor were becoming central to their electoral strategy. However, following *La Violencia*, Liberals distanced themselves from this base of support and abandoned the programmatic commitments they had made. They chose to pursue electoral stability and security in the face of the crippling partisan violence – and in fact elites in both parties had the explicit goal of “depoliticizing the Colombian population” (Collier & Collier, 673). The move to depoliticize the populations took the form of the National Front government (1958-1974), in which the Liberal and Conservative parties agreed to evenly divide all political offices for the duration of the arrangement, and importantly, to alternate the presidency between candidates from each party.

The National Front government had the effect of making presidential elections functionally irrelevant:¹²⁰ since there was no choice between candidates, elections served only to legitimate the pre-determined electoral outcomes. Given that the Colombian political system was highly centralized in the office of the president,¹²¹ and that governors only started to be popularly elected in 1984, this gave the president's pre-election even stronger anti-democratic implications. During the National Front and up until the 1991 Constitution was passed, all budgeting and appointments, from the national to the local level, came from Congress but had to be signed off on by the President. Unlike most democracies in the region, "while governors and mayors, departmental assemblies, and town councils continued to exist, they acted as representatives not of municipalities and departments, but of the central government" (Collier & Collier, 679). The fixed presidential elections therefore effectively meant the end of the possibility of democracy not just at the national level, but at the local and departmental level as well. Additionally, as the Liberal party moved away from any programmatic linkages it had and the Conservative party continued to operate exclusively through its patronage network, the National Front effectively precluded electoral redress for any political grievance. Not surprisingly, electoral participation fell precipitously, and indeed these

¹²⁰ Though elections were predetermined, there was still room for contention within each party. While the presidency was "fixed," party conflict raged in the selection process for the presidential candidate, and Congressional elections were not fixed. In 1970, the National Front in fact lost its majority in Congress when the "popularly" oriented sectors of both parties collaborated in order to form an electoral coalition. The splitting of each party was arguably Colombia's first experience with an independent opposition, though the electoral rules made any actual governing or law-making impossible for these party branches, and each branch did have to stay under the auspices of the dominant parties to be allowed to compete. Despite these limitations, the UP explicitly would seek to incorporate these rogue Liberal and Conservative branches in the 1980s.

¹²¹ "The President of Colombia is almost the totality of the state;" his decision powers are "almost absolute," Vázquez Carrizosa, 1986, 15, as cited in Archer & Shugart, 118,

electoral changes drove Colombians away from the two traditional parties. This closing of the democratic political opportunities represented a retrenchment of politics as an elite enterprise in Colombia, and spawned a number of armed guerrilla movements. Indeed, all of Colombia's major guerrilla movements were born during this period.

While the FARC claims its roots in peasant defense groups in the 1930s and 1940s, which were largely organized by the Communist party, it was formalized as a movement in 1964. The group had originally been made up of small armed enclaves during and following *la Violencia* that continuously had to flee counter-insurgency campaigns, and it retained this rural, increasingly isolated identity in the 1960s. However, it was joined by various vanguardist, urban-based movements during this time, most notably the ELN, the National Liberation Army; M-19; and the EPL, the Popular Liberation Army. While these groups experienced various degrees of success – notably, in 1985 the M-19 disastrously stormed the Palace of Justice, and were eventually killed by government forces, together with 11 Supreme Court justice – they relied on a combination of money earned from kidnappings, drug trafficking and ransom in order to support their ongoing revolutionary activities.

While the National Front period was originally set to end in 1974, its basic logic and structure continued through the 1980s. The two parties continued the large electoral confederations that had been the only legal form of political formation during the National Front era, politics continued to be characterized by clientilistic linkages and the exclusion of the popular classes, and this exclusion continued to make space for leftist

and revolutionary movements which in turn ideologically justified the existence of paramilitary organizations.

Governmental approaches to the war with the guerrillas alternated between negotiation and hardline, *mano dura* approaches. The 1980s began with the relatively hardline administrations of Julio César Turbay Ayala, and then swung back towards conservative but compromising Belisario Betancur in 1982. Betancur offered an amnesty to the FARC, and later a ceasefire. The never-ending peace negotiations with the FARC would stall, but a FARC-backed political party, the *Unión Patriótica* (UP), would emerge out of these negotiations in 1985.

B. Elite-Dominated Politics and the Emergence of Paramilitaries

The elite stranglehold on power during the National Front governments was maintained not only through the coercive apparatus of the state, but also through the use of paramilitary forces which did the “dirty work” that the army was unable or unwilling to perform. These groups were legalized in 1968 with the passage of Law 48, which “allowed government to mobilize the population in activities and task to restore the public order” (Tate 2008, 51). Tate divides the paramilitary groups’ evolution into three historical periods:

- 1) 1970s and early 1980s: Characterized largely by death squad operations. These early groups were explicitly anti-Communist, and operated largely in tandem with the army.

- 2) 1980s and early 1990s: private armies funded by DTOs. As profits from the drug trade grew, “counterinsurgency ideology and illegal narcotics revenue produced one of the most lethal fighting forces in Latin America” (Tate, 51). The paramilitaries had diversified: they worked to protect local drug traffickers from incursions from the guerrillas, to ensure impunity for the drug traffickers by assassinating any government official who attempted to investigate the DTOs, and to eliminate suspected leftists and guerrilla sympathizers, especially if these people were running for the newly-open positions of mayors and local officials. They also dabbled in electoral politics – something they would later come to dominate. During this period, however, they managed to capture only a few local seats, and overall they remained divided regionally.
- 3) Late 1990s: Consolidation of paramilitary groups under umbrella organization AUC, United Self-Defense Forces of Colombia. By the end of this period, paramilitaries had grown to almost 15,000 troops. They had also launched a political legitimization campaign, and by the end of this period were able to build enough national and international support to push through what amounted to an Amnesty law themselves.

Importantly, these three stages of paramilitary development reflect the complicated relationship between paramilitaries, the state and drug-trafficking organizations. While paramilitary groups emerged initially as brothers in arms with the Colombian state in their fight against the leftist insurgency, by the 1980’s their loyalties were divided between DTOs and the state. The enormous profits reaped from the drug trade permitted

the paramilitary groups to build power and autonomy, and to emerge as more powerful than the state in some contexts by the 1990s.

C. The complicated relationship between social movements and guerrillas

The history of human rights organizing in Colombia is of course inextricably linked to the FARC and the other guerrilla groups, as well as to the paramilitary violence. Coming into the 1980s, human rights groups were virtually non-existent, while various guerrilla groups had substantial money, power and legitimacy. Guerrilla groups largely embraced a strategy of *todas las formas de lucha*, or all forms of struggle. By this they meant that they supported both armed and peaceful, legal means to attack the state (see Dudley, 2004). This would prove disastrous for nascent social movements and civil society organizations that rejected armed struggle and only wanted engage in legal mobilization:

Leaders who attempted to develop genuine political independence were targeted by guerrillas for failing to adhere to guerrillas' *linea* and by paramilitary groups for being a front for guerrilla organizations." (Tate 2006, 99)

The "all forms of struggle strategy" included embracing a FARC-sponsored political party, the UP, or Patriotic Union. The emergence and early moderate electoral success of the UP was in some ways encouraging for political participation in Colombia. However, the political openings of the 1980s, including the increase in vertical accountability in local elections, were also accompanied by a dramatic increase in violence, mostly targeting leftist politicians and leaders. UP activists claim that more than 3,000 people affiliated with the nascent political party were assassinated by the state and paramilitary

forces in the late 1980s.¹²² While the exact number of UP killings is in dispute, that nearly every single UP candidate was assassinated is not: two of the UP's presidential candidates, eight congressmen, and more than 70 local councilmen. These political killings, carried out by a combination of state forces, drug traffickers, and paramilitary groups, would widely be met with impunity.

The emergence of human rights groups ran parallel to, and at times intersected with, the political violence against leftists. During the Ayala administration, whose anti-insurgent practices included summary executions of suspected guerrilla collaborators, the first human rights organization was born. The Permanent Committee for the Defense of Human Rights (CPDH)¹²³ was formed in 1979 by a “broad cross section of the Colombian intellectual and political elite,” with the Communist Party (PC) taking a leadership role (Tate, 2007: 84). However, as violence mounted against the left in Colombia, and especially the Communist Party and the UP, these leftist groups came to dominate the Permanent Committee. Not only did the leftists have the organizing capacity and national network to support the organization, but human rights – especially the right to physical integrity – became increasingly relevant to these groups, and less relevant to other sectors, as partisan violence increased.¹²⁴

¹²² See Dudley, *Walking Ghosts*, 2004 for an extensive discussion of this period of Colombian history.

¹²³ See Tate 2007: 82-84 for discussion of early years of the CPDH

¹²⁴ One founding member of the Permanent Committee commented: “The [first] forum [of the Permanent Committee] was guaranteed to work because the Communist Party organized it. After that a lot of people withdrew, and the sectors of the left were the ones who remained, along with the PC. Other sectors started feeling like they didn't have a place within the Committee. They kept having forums, and each time there was less and less participation of the nonleft sectors” (Tate, 2007: 84).

This political context meant that most human rights organizations did not form and coalesce in opposition to the guerrillas – quite the opposite. Drawing from more than 13 years of working with human rights NGO's in Colombia, Winifred Tate writes that

Many of the activists who began work with individuals detained and accused of being guerrillas did so not because they believed those individuals has been falsely accused of crimes....many of them saw the defense of so-called political prisoners as the defense of the right to armed rebellion and as an extension of the guerrillas' struggle (Tate 2007, 99).

These close relationships between armed actors and human rights groups would come to plague human rights activists during the 1990s and 2000's. This link between human rights and guerrillas would be articulated as the justification for exterminating human rights activists and dismissing their claims as yet another type of warfare against the government. Since the guerrillas had indeed supported the work of these organizations as part of their all-out war against the state, this would prove to be almost impossible to refute. But human rights organizations would try with all their resources to do so – professionalizing their internal processes and denouncing violence in all its forms.

This need to distance themselves from guerrilla groups, however, makes understanding the intricacies of these groups' relationships to each other in the 1980's nearly impossible. Tate reports:

No one I spoke with would comment in any detail on the actual history of relations between guerrilla groups and specific NGOs... [One person] recalled the debates at the organizations he worked with on how to relate to the guerrillas: "within the NGOs, there were people on one side or another, Now, I don't like divisions, but within the NGO's there were a lot of political difference. Some had their positions, some received direct orders from *el monte* [lit., "the mountain"; refers to remote guerrilla headquarters]. Some of us, we wanted something else, we wanted to be a little more independent from armed actors" (ibid., 99).

Others referred to the armed insurgents as *hermanos*, brothers, or *primos*, cousins. These close relationships would prove to be an untenable cost to human rights organizations as guerrilla groups were exterminated, marginalized and increasingly strayed from their ideological roots. The extermination of the UP was the most important development in the distancing of human rights organizations. The UP had attracted the most prominent moderate voices of the FARC who valued dialogue with the government and other civil society organizations. As these voices were silenced through assassinations, the moderate wing of the FARC all but disappeared. Simultaneously, it became clear to human rights organizations that they needed to occupy a political space distinct from these groups if they were to be able to survive. An alliance with the church was soon as the most direct route to political legitimation.

D. The Church and Human Rights Organizations

An alliance between human rights organizations and progressive Catholics was not an entirely new development. The documenting of and mobilizing around grave human rights violations in Colombia had links to the Catholic Church, and specifically to the Jesuits.¹²⁵ Father Javier Giraldo,¹²⁶ perhaps the best-known human rights defender in Colombia, convened the families who would come to form the first organized victims' group in Colombia. ASFADDES, the Association of Families of the Detained and Disappeared in Colombia, began in 1982, at the beginning of the conservative Belisario

¹²⁵ The Jesuits have historically been broadly aligned with the left in Colombia, though not formally allied with communist political parties nor the armed leftist groups. CITE

¹²⁶ For a good history of Father Javier's political work in support of human rights, see http://www.cinep.org.co/index.php?option=com_content&view=article&id=192%3Ael-polemico-padre-javier-giraldo&catid=85%3Ael-cinepppp-en-los-medios&lang=es

Betancur administration. Padre Javier, as he is known in Colombia, had noticed fliers around Bogotá reporting students and other young people missing. He says:

I collected these announcements [of missing people] because it seemed to me that we were seeing a new mode of repression, similar to Argentina, Uruguay or Chile. One Saturday I took the vehicle from my community and went out looking for addresses of those that were cited in the fliers. I met with very anxious families... and I verified that enforced disappearance really had begun. Everything indicated that these were detentions carried out outside of legal norms” (ASFADDES, 29-30; author translation).

The family members of twelve National University students, one worker, and one peasant leader initially organized ASFADDES.¹²⁷ All had been forcibly disappeared between March and September of 1982, and the government claimed that two of these people had been killed during the course of police operations. As the group of family members began to meet regularly, they realized that the National Police, called F-2 at the time, were the link between these disappearances. While these were among the first cases of enforced disappearances carried out by the police, CINEP, an early and important human rights NGO where Padre Javier worked, cites 1984 as the first year that they documented patterns of extrajudicial executions being committed by the Colombian army.¹²⁸

¹²⁷ This information was gathered during extensive interviews with ASFADDES representatives in June, 2013, and also drawn from a book ASFADDES wrote about their own history “*ASFADDES: Veinte Años de Historia y Lucha*.” Tate, 2007, states that ASFADDES was founded by family members of 14 university students.

¹²⁸ CINEP, the Center of Research and Popular Education, presents the first case of a false positive as occurring on October 3rd, 1984. Luis Fernando Lalinde, a sociologist, was detained, disappeared and killed by the army (CINEP, 2011). The Inter-American Commission for that the Colombian government was guilty of violating his right to physical integrity. Luis’ brother, and later his mother, were active members of ASFADDES. Additional early, well-known cases:

* In 1990, a declassified US Embassy cable approved by U.S. Ambassador Thomas McNamara, reported that in the case of the purported killing of nine guerrillas in El Ramal, Santander, “The investigation by Instruccion Criminal and the Procuraduria strongly suggests ... that the nine were executed by the Army and then dressed in military fatigues. A military judge who arrived on the scene apparently realized that there were no bullet holes in the military uniforms to match the wounds in the victims’ bodies...” (See Evans, 2009: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB266/index.htm>, accessed 1/14/14).

* In 1991, “in a little village near the town of Mocoa (Department of Putumayo) the national police executed a village teacher, suspected as collaborator of the guerrillas, his two children and a bricklayer.

Early human rights mobilization in Colombia was led by ASFADDES, and therefore highlighted the issue of enforced disappearance. Members of ASFADDES began weekly marches through the heart of Bogota's political and economic centers on February 4th, 1983. They would continue to march each and every Thursday until mid-1984, when threats to their safety forced them to stop. ASFADDES would officially register with the Colombian state in 1985, and expand to include family members of the disappeared in other Colombian cities affected by disappearances, most prominently Neiva and Medellín.

These early mobilizations did draw state attention, but few concessions. After ASFADDES had held several marches, they were invited to meet with the Betancur administration. They would have three meetings, none of which the group considered very successful. Representatives of the National Police, or F-2, attended the third and final meeting. When Padre Javier suggested that the people they were looking for had been forcibly disappeared, and that they were not missing people, the head of F-2 walked out of the meeting.

The Colombian state's denial of responsibility for enforced disappearances or extrajudicial executions would remain remarkably stable throughout the 1980s, 90s and

They dressed up the cadavers with guerrilla clothes and presented them as FARC collaborators. The case later was subject to a verdict by the Inter-American Court of Human Rights in 2000 (Case of Las Palmeras v. Colombia, Preliminary Objections, Judgment of 4 February 2000)" (Salazar, 401).

2000s.¹²⁹ In the mid-1980s, government officials vocally claimed that most cases were perpetrated by the guerrillas or drug trafficking groups,¹³⁰ or that if they were perpetrated by the government they were “isolated” cases, produced “in spite of” or “against” the Government. They also suggested that the burden of proof be put on those who were reporting the disappearances, and claimed that the majority of the disappeared had “died in combat in the mountains,” a common Colombian euphemism meaning that the disappeared had been members of guerrilla groups, and had died in battle.¹³¹

Unlike victims’ groups in Argentina or Chile, ASFADDES had the advantage of being closely linked into international networks and drawing from their experiences from the beginning. FEDEFAM, *Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos* (Latin American Federation of Associations of Families of the Detained and Disappeared) had been formed in 1981, and by 1983, representatives of FEDEFAM had come to Colombia to visit with members of ASFADDES. In 1986, members of FEDEFAM from throughout Latin America, including ASFADDES, met in Bogotá, where they drafted the Project of the Convention against Enforced Disappearance, which ten years later would be adopted by the UN General Assembly (ASFADDES, 48). This linkage to FEDEFAM would prove politically important

¹²⁹ However, there were periodic breaks in the official line. On February 20th, 1983, the *Procurador*, the Colombian Attorney General, admitted for the first time that there indeed were people being forcibly disappeared in Colombia. He indicated that there were 163 people that could be considered to have participated in death squads that engaged in the practice of enforced disappearance, among those 59 of whom were from the state. In 1987, representatives from ASFADDES undertook a three-week trip to try and find the bodies of those that had been disappeared. “This was the first time we were shoulder to shoulder with the state, and some of these [government official’s] intentions were pure” (ASFADDES interview, 2013).

¹³⁰ Document E/CN.4/1985/15, from the Report of the Working Group on Enforced Disappearances to the UN Human Rights Commission, as cited in ASFADDES, 34.

¹³¹ Document E/CN.4/1986/18, from the Report of the Working Group on Enforced Disappearances to the UN Human Rights Commission, as cited in ASFADDES, 41.

throughout ASFADDES' and other victims' organizations histories, positioning them as elite interlocutors with an institutional presence at the UN and with the Colombian state.

Partially through their connections with FEDEFAM, ASFADDES was quickly able to link into relevant UN working groups and treaty enforcement bodies. In 1984 the newly created UN Working Group of Enforced Disappearances made its first report to the Colombian state, asking them for information regarding the disappearance of 17 people; by 1985, it would ask the Colombian state about the status of 162 cases. And in 1988, the Working Group came to Colombia to investigate enforced disappearances itself.

B. 1990s: Increased violence leads to more internationalization and professionalization

Colombia in the 1990s was increasingly in the crosshairs of international human rights advocates and institutions. A new, more progressive constitution in 1991 held the promise of a state more open to citizen participation. However, the inability of the Colombian state to prevent the slaughter of the UP, and a particularly egregious series of massacres that occurred in a town called Trujillo, highlighted the serious deficiencies in the Colombian state's capacity and willingness to meaningfully address human rights concerns. In this violent context, the nascent network of human rights organizations that had emerged in the 1980s grew quickly, and increasingly sought the accompaniment of international NGOs and allies in their struggle for justice – and also their own safety. These NGOs increasingly placed their ability to consistently and credibly document cases

of human rights abuses at the center of their institutional missions and professional reputations (Tate 2007, Ch. 3).

The Intercongregational Commission of Justice and Peace, known as *Justicia y Paz*, was founded by Padre Javier in 1989, and was the first organization to document the Trujillo massacres. The massacres took place in a small town outside of Cali, Colombia's third-largest city located in the southwest of the country in an area increasingly overrun by drug trafficking organizations and paramilitary groups. The massacres claimed the lives of over 340 people between 1988 and 1994, and were characterized by extreme brutality: witness testimony indicated that members of the military participated in the live dismemberment of victims with chainsaws.¹³² The Trujillo massacres became a paradigmatic case for Colombian human rights NGOs, serving to illustrate the increasing scale and depraved nature of massacres being carried out, and also the near-impossibility of obtaining justice in cases of state involvement in grave human rights abuses. Despite the testimony of a dozen witnesses, including a former paramilitary member who witnessed and participated in many of the murders, and the involvement of various UN bodies, the Organization of American States, and extensive diplomatic pressure especially from the United States, the Colombia justice system was not able to hold a single person legally responsible for the killings (Tate 2007: 61).

The Trujillo case was the first case that Colombian NGOs brought before the InterAmerican Human Rights Commission (IACHR), and many hoped it would be a

¹³² See <http://www.usip.org/publications/historical-case-study-violence-in-colombia>

turning point for human rights in Colombia. In 1994, the IACHR, at the request of the newly-founded *Defensoría del Pueblo*, the Colombian ombudsman's office, and several NGOs, reached an amicable agreement which required that the Colombian state work with the NGOs to reach a satisfactory resolution to the case. They did this instead of sanctioning the Colombian state – something they had done before, but which had not been particularly productive. The Samper administration (1994-1998) deviated from the official government line, admitting that there were human rights issues in Colombia that needed to be addressed, and accepted the Trujillo Commission's findings, which included recommendations for reparations to the victims and criminal cases against the perpetrators. At the same time, the case served to illustrate the limitation of international pressure. The Clinton administration closely watched the case, and declassified documents show that the US government communicated in strong, frank language the importance of judicial progress in the Trujillo case.¹³³ Despite this, there was no governmental response to the killings, and by the late 1990s several NGOs involved in the case were forced to shutter their offices, including the one located in the town of Trujillo, due to death threats.¹³⁴

Within this increasingly hostile environment, it became clear to human rights advocates that getting the facts right in cases was absolutely necessary. After several missteps in

¹³³ See Trujillo Declassified: Documenting a 'tragedy without end': "The State Department's top human rights official, John Shattuck, told [President] Samper in one 1995 meeting that "*rhetorical advances*" needed to be followed by "*evidence that the Colombian state can and will attack the underlying cause of its high levels of human rights violations and general violence: impunity.*" Referring to Trujillo and two other cases, Shattuck said that "*until the Colombian military and/or civilian justice systems are capable of investigating, trying, convicting, and sentencing those responsible for the massacres, the institutional reforms would be empty gestures.*" What mattered, Shattuck said, was that Colombia begin to "*show results ... in instances of human rights violations attributed to the state security forces.*" <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB259/>. Accessed 3/1/14.

¹³⁴ See <http://colombiasupport.net/archive/199903/jyp0299.html>

which cases were documented inconsistently and human rights claims were not followed up on reliably, several Colombian human rights organizations were born with the explicit mission of communicating well-researched, well-documented cases to international partners, including the UN. *Comisión Colombiana de Juristas*, The Commission of Colombian Jurists (CCJ) and the *Comisión Colombiana Europa Estados Unidos*, or the Colombian-European-US Commission (CCEEU) are two of the best known of this new type of organization (Tate, 120). These organizations were formed by international coalitions that included Colombians, Europeans and groups from the United States, and engaged in extensive training of Colombian groups in how to document and present their cases.¹³⁵ Amnesty International was also following the issue of forced disappearances early on in Colombia, and issued action alerts and reports calling attention to both the disappearance of activists, and also the ongoing impunity and state negation of their responsibility. They also helped threatened activists leave the country as refugees.

These coalitions extended beyond Europe and the US. In 1991, the *Grupo Argentino de Forenses*, the Argentinian Forensics Group came to Colombia, and worked with ASFADDES to teach its members how to preserve and evaluate crime scenes and corpses. Before the Argentines trained the Colombians in basic forensic management of crime scenes, the state would often destroy evidence. The Argentinians were key in training ASFADDES members as to what they could demand from the state, and

¹³⁵ Describing the need for training, Tate quotes a founding member of CCEEU as saying: “The problem with the information was that it was too general – everything is the fault of the neoliberal system – or it was too specific – such and such happened in the vereda Santa Rosa last weekend, and no one had any idea what you were talking about” (Tate 121).

providing them with the technical expertise that would later become key as mass graves containing those who had been extra-judicially executed were uncovered.

It was not only the Argentinians who shared their experiences with the Colombian organizations. In 1994, at a conference in Bogotá about Crimes against Humanity, delegates from Argentina, Chile, Uruguay, Bolivia, El Salvador and Guatemala met with the Colombian human rights advocates gathered about the importance and difficulty of systematically documenting human rights abuses. In 1995, the initiative which would come to involve 17 human rights organizations¹³⁶ in Colombia came together to systematize the registration and documentation of human rights violations – specifically torture, extrajudicial executions, and enforced disappearances. They had workshops and began to work closely together to bring coherence to what had been disparate methodologies of gathering information on human rights abuses. “We realized we needed to stop duplicating efforts, and we needed to combine our databases into one database, which would be called ‘Nunca Más: Crímenes de Lesa Humanidad’ (Never Again: Crimes Against Humanity).”¹³⁷

¹³⁶ These groups included: Asociación de Familiares de Detenidos Desaparecidos de Colombia (ASFADDES), Colectivo de Abogados “José Alvear Restrepo”, Comisión Intercongregacional de Justicia y Paz, Fundación Comité de Solidaridad con los Presos Políticos (CSPP), Comité Permanente por la Defensa de los Derechos Humanos (CPDH), Comisión Interfranciscana de Justicia, Paz y Reverencia con la Creación, Corporación Sembrar, Comité Regional de Derechos Humanos de Santander – CREDHOS-, Fundación Reiniciar, Colectivo de Derechos Humanos Semillas de Libertad CODEHSEL, Corporación Jurídica Libertad, Comunidades Eclesiales de Base y Grupos Cristianos de Colombia –CEBS-, Humanidad Vigente Corporación Jurídica, Fundación Manuel Cepeda, Asociación Nacional de Usuarios Campesinos Unidad y Reconstrucción –ANUC UR-, Asociación Nacional de Ayuda Solidaria –ANDAS- y la Comunidad de los Misioneros Claretianos de Colombia.

¹³⁷ Interview with member of MOVICE, June 2013.

The Nunca Más project left human rights organizations with a highly developed and professional methodology for receiving and documenting cases. By 2005, this effort would result in the documentation of more than 41,000 cases of grave human rights abuses. Though this coalition would later dissolve, it is important that each of the aforementioned groups had been trained by international actors, including the UN Working Group on Enforced Disappearance and other Latin American human rights groups, on how to document cases. Many of these groups would come together to form the *Mesa sobre Ejecuciones Extrajudiciales*,¹³⁸ or the Roundtable on Extrajudicial Executions, in which CCEEU would play a central role. CCEEU alone has 234 member organizations, and their network of peasant, union, indigenous, Afro-Colombian, women's and human rights groups give it broad presence in the geographically and culturally diverse Colombian territory.

It was this effort that enabled this coalition to begin to detect patterns of human rights abuses, and equipped these groups to effectively communicate with the various United Nations bodies that were monitoring the human rights situation in Colombia, including the UN High Commissioner for Human Rights (UNHCHR), the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Working Group on Enforced

¹³⁸ The *Mesa* is made up of the following groups: Observatorio de la Coordinación Colombia-Europa Estados Unidos, Fundación Nydia Erika Bautista (FNEB); Asociación de Familiares de Detenidos Desaparecidos (ASFADDES); Asociación Familiares de Desaparecidos Forzadamente por el Apoyo Mutuo (Familiares Colombia), Corporación Reiniciar; Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE); Corporación Desarrollo Regional (CDR), Grupo Interdisciplinario de Derechos Humanos (GIDH); Corporación Jurídica Libertad (CJL); Equipo Colombiano Interdisciplinario de Trabajo Forense (EQUITAS); Comisión Intereclesial de Justicia y Paz (CIJYP); Equipo Colombiano de Investigaciones Antropológico Forense (ECIAF); Comité Cívico del Meta; Humanidad Vigente; Corporación AVRE; Corporación Social para la Asesoría y Capacitación Comunitaria (Cospac) y Semillas de Dignidad y Memoria.

Disappearances. In 1995, the Corporation for Judicial Freedom (CJL), a Medellín-based human rights organization affiliated with the Nunca Más project, reported that it started to receive a marked increase in reports of extrajudicial executions.¹³⁹ Hence, when the UNHCHR established its office in Colombia in 1996, Colombian civil society groups had already begun to realize that the phenomena of extrajudicial killings was on the rise, and they immediately passed this information to the UNHCHR. In its first reports, the UNHCHR cites reports on enforced disappearances by CINEP,¹⁴⁰ the Jesuit human rights organization that was part of this coalition. This coalition of organizations had also been in close touch with the Special Rapporteur on extrajudicial, summary or arbitrary executions. In 1997, as a result of close coordination with these groups, the Special Rapporteur “transmitted 24 urgent appeals to the Colombian Government requesting that the necessary steps should be taken to protect the physical integrity and right to life of persons who had received death threats from members of the armed forces, the police, paramilitary groups or individuals cooperating with them.”¹⁴¹

III. 2000s: “Democratic Security” and the realignment of NGOs and movements

Frustrations with peace negotiations during Andres Pastrana’s administration (1998-2002) led in large part to the election of hard-liner Alvaro Uribe Velez, who would be in power from 2002-2010. He launched a policy of “democratic security,” and would

¹³⁹ See interview with Bayron Góngora, of Corporation for Judicial Freedom, *Corporación Jurídica Libertad* (CJL) in Colombia, February 2009. http://www.pbi-colombia.org/fileadmin/user_files/projects/colombia/files/colomPBIa/ColomPBIa_no10_eng10.pdf

¹⁴⁰ The 1998 Report by the United Nations High Commissioner for Human Rights cites CINEP several times: “According to data provided by the Centre for Research and Popular Education - Justice and Peace (CINEP), a total of 3,341 persons met with violent deaths between January and September 1997” (paragraph 26); “CINEP-Justice and Peace reported that between January and November 1997 there were 87 cases” of enforced disappearances” (paragraph 41).

¹⁴¹ *Ibid.*, paragraph 31

oversee an increase in violence by the state against both politically active and average citizens.

Human rights advocates increasingly recognized the power of consolidating their movements, and by 2002, most of the members of the group that had worked together on *Nunca Más* decided to form a permanent network, which they called MOVICE, el *Movimiento Nacional de Víctimas de Crímenes de Estado*, the National Movement of Victims of State Crimes. MOVICE would go on to be the key player in getting the 2011 Victims Law passed, which obligated the state to pay reparations to victims of human rights abuses and to restore land to people displaced by violence.

However, some groups, including ASFADDES, did not join MOVICE. Though the reasons for this differed, MOVICE was understood to be moving towards doing more political work. And it was becoming more dangerous to do political work: in 1998, the headquarters where *Nunca Más* was headquartered was broken into. In October 2000, Angel Quintero and Claudia Patricia Monsalve, who had worked with ASFADDES in Medellín, were disappeared.¹⁴² In the face of increased violence against all societal actors, groups began to splinter. ASFADDES split into different groups: a former head of ASFADDES, who had also served as the head of FEDEFAM, started her own

¹⁴² Violence against ASFADDES did not stop in the 2000s: On September 30th, 2011, three members of ASFADDES were declared military targets in a pamphlet published by Colombia's largest paramilitary group, the AUC. On July 11th, 2011, Elizabeth Canas Cano, a member of the Barrancabermeja branch of ASFADDES, was murdered.

Foundation, *Fundación Nydia Erika Bautista*, named after her disappeared sister.¹⁴³ In 2005, another group of family members of victims formed another victims' organization, under the name *Familiares Colombia*, Colombian Family Members. All of these victims' groups, located in Bogotá, would go on to legally advocate for victims of enforced disappearance. While they would achieve some judicial advances, these were limited, generally only to a few victories, and far fewer in number than in comparable Mexican organizations discussed in the previous chapter.

Uribe had promised to defeat the leftist FARC guerillas using decisive force, and the number and reported scale of all types of human rights abuses grew during his tenure. The practice of extrajudicial killings also began to shift: the cases being reported to the human rights advocacy groups had previously been extrajudicial executions perpetrated against social and political leaders tied to the left. Increasingly, however, the “false positives” practice targeted a different constituency: economically and politically marginalized citizens, especially young men. The change in the identity of civilian target meant that the victims reporting abuses to the human rights groups no longer were their natural political allies: many of the victims and their families were a-political, or even supported President Uribe in his fight against the guerrillas. Indeed, Uribe enjoyed very high popularity throughout his two terms. This diversity in the politics of victims and their families, however, meant that it became difficult for “victims” groups to effectively work with groups like MOVICE, which was clearly tied to the left and had a radical political agenda. It also produced some splits between the increasingly professional

¹⁴³ Nydia Erika was a militant with the guerrilla group M-19 who was disappeared by members of the Military Intelligence unit of the army in 1987. The Foundation was officially launched while the Bautista family was in exile in 1997, and they began to operate in Colombia in 2007.

NGOs, and the victims' movements. While the professional NGOs prioritized case documentation and thought strategically about which cases might have the highest success rates, the victims' movements were interested in taking on all cases of disappearances and extra-judicial killings.

IV. Conclusion

In this chapter, I present the history and context of state-civil society relations in Colombia. Colombian civil society mobilization against violations of the right to physical integrity date back to the 1960s. Historically linked to the armed left, these mobilizations – some of which targeted impunity – were unable to produce significant breakthroughs in judicial results until the false positives scandal of the late 2000's, which will be discussed in the following chapter. This failure to win judicial results was due to the political impossibility of an insider advocate to establish a working relationship with the state. NGOs' historic links to the armed insurgency made them vulnerable to accusations of collaboration with the guerrillas, and made them targets of state and paramilitary violence. This meant that human rights organizations - those who should have been in the position to be insider advocates - were themselves the targets of government-sponsored persecutions and executions. In order to gain any traction with the state therefore, human rights groups had to build links with an outside organization – in this case the United Nations High Commissioner for Human Rights. In the next chapter I will explore how this alliance was built, and on the long-awaited breakthrough to access justice.

Chapter Six

The Politics of Disrupting Judicial Inertia: How the Colombian State Began to Punish its Own

I. Introduction

Over the course of late 2007 and 2008, 22 young men from the town of Soacha, a poor city bordering Bogotá to the south, were lured into trucks by civilian recruiters working for the army with false promises of employment. Evidence would later show that they were transported far away from their homes and killed by members of the army. Soldiers and their commanders then presented these corpses as enemy fighters killed in combat, earning themselves career and monetary rewards for advancing the Colombian government's war against the leftist guerrillas. After the facts of the disappearance and murder of these 22 young men from Soacha was revealed in the national media, similar cases emerged throughout Colombia of poor, economically and politically marginalized young men being kidnapped by military recruiters and turning up dead far from home, claimed by the army as legitimate battle kills.

When news of the Soacha scandal broke in September 2008, it ignited a firestorm of criticism against the Colombian government. People were outraged that innocent civilians had been targeted in an apparent effort to gain material and political benefit for members of the armed forces. The scandal was dubbed the “false positives”¹⁴⁴ scandal,

¹⁴⁴ “False positives” refer to a specific type of extrajudicial killing employed by state forces in Colombia. I slightly adapt the definition of false positive employed by the NGO CCEEU (Colombian, European United States Coordination): Intentional murders of Colombian civilians falsely presented as combat deaths with the goal of showing successful results under the “democratic security” policy, a policy designed to combat guerilla organizations and terrorism” (CCEEU, 2013). Coincidentally, Beth Simmons uses the term “false

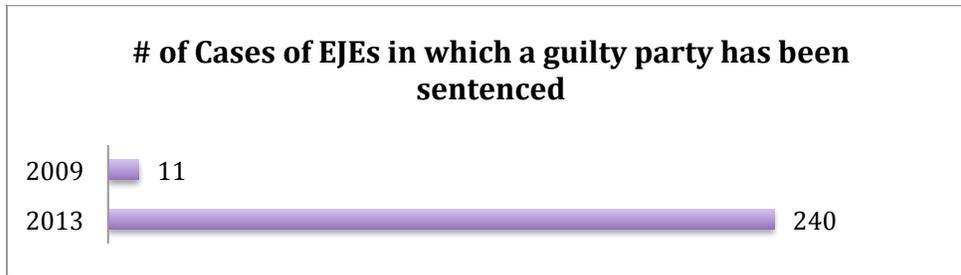
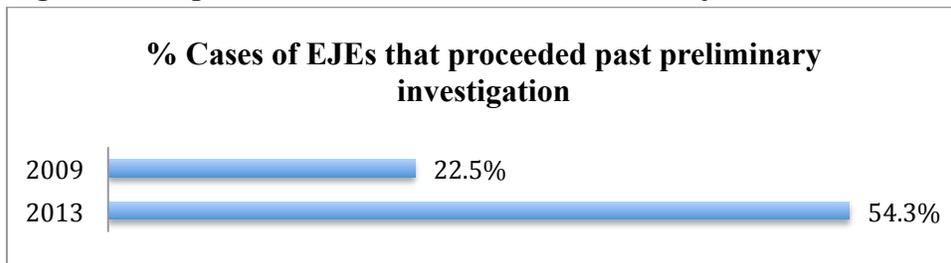
and the circumstances of these killings would be scrutinized by the media and disputed among government officials.

Scandal in Colombia, however, is nothing new. The Trujillo massacres of 1988-1994 in which the military had butchered hundreds of live civilians with chainsaws; the massacre of more than 3,000 members of the guerilla-backed political party the Patriotic Union; the ongoing targeted killings of union and social movement leaders. All of these scandals received widespread coverage in the media, condemnation by politicians, and calls for justice by civil society. Unlike the countless scandals that came before it, however, the false positives scandal appears to have caused an important institutional change. The famously intransigent justice system, which convicts very few people for any crime, much less members of the military for murdering civilians, has begun to change the way it deals with cases of extrajudicial executions (EJEs)¹⁴⁵ perpetrated by the military. Using data that provides a snapshot of the judicial statuses of cases of EJEs being investigated in 2009 and 2013, we see a remarkable improvement in the judicial fate of these cases:

positives” to refer to states who ratify treaties (especially human rights treaties), to “avoid the criticism associated with remaining outside of the [human rights] regime” (Simmons, 2009: 18). My usage is consonant with the way the term has been used in Colombia, and is in no way related to Simmons’ usage of the term.

¹⁴⁵ Extrajudicial executions are murders carried out by government officials outside of any legal or judicial process. See UN General Assembly resolutions 53/147, adopted December 19th, 1998, 61/173, adopted December 19th, 2006, on ‘extrajudicial, summary and arbitrary executions’.

Figure 6.1 Improvement in Judicial Status of Extrajudicial Executions, 2009-2013



In the previous chapters I have made the case that civil society mobilization and advocacy are a key part of achieving justice in *particular cases*. I have looked exclusively, until now, at direct causes: how advocacy by an NGO affects the judicial status of cases advocated for by a particular NGO. While I have presented evidence that organized citizen action can indeed affect the judicial success of particular cases, the circumstances under which these particular victories can translate into *system-wide transformation*, in which impunity ceases to be the norm, has not been broached.

In this chapter I discuss the largest variation in judicial outcomes found during the course of researching this dissertation: the system-wide transformation in the way the Colombian civilian justice system deals with one type of human rights violation - extrajudicial executions. While overall rates of impunity for violations of the right to physical integrity (murder, enforced disappearance, torture, kidnapping) in Colombia remains comparable to those in Mexico, the analysis in this chapter shows that there is a

non-random, recent and dramatic improvement in the judicial success rates of cases of EJE (see Appendices 2 and Appendix 4). In 2009, only eleven people had been found guilty and been sentenced for the crime of extrajudicial executions – that’s a lower than one percent rate of conviction. 78 percent of more than 1,300 cases of EJE had not proceeded past the initial reporting phase. In this 78 percent of cases, no measurable judicial action had been taken, and there was no evidence of active investigation.¹⁴⁶ By 2013, 240 perpetrators had been sentenced for committing EJE, and over half – 54 percent - of just over 3,000 cases showed concrete judicial advances.¹⁴⁷

In the pages that follow, I ask what caused the dramatic, rapid systemic change in the judicial success rates of extrajudicial executions in Colombia. While the Soacha scandal was key in alerting the Colombian public to the military practice of extrajudicial killings, I find that the strategic and coordinated advocacy of civil society groups (activists) and international actors, most prominently the Colombian office of the UN Office of the High Commissioner for Human Rights (UNHCHR) (advocates), channeled the political will generated by the Soacha scandal into systemic change in the judicial system. The necessary condition for the success of these actors was an institutional openness inside of the Colombian government produced by shifting political and military realities that enabled the UNHCHR to have access to state investigatory officials, facilitating their transition into an effective advocate role.

¹⁴⁶ The 2009 figures were obtained from a data request from the Fiscalía General de la Nación by Corporación Jurídica Libertad, a Medellín-based NGO. They include the judicial results for cases of extrajudicial killings committed between 2000 and 2009, that were being investigated by the National Human Rights Unit (NHRU), a unit of the Attorney General based in Bogotá that currently handles 68 percent of investigations into EJE. I discuss the source of the 2013 data in the Methods section: importantly, the 2013 comparative data cited here is also from the NHRU.

¹⁴⁷ Please see Appendix 1 for a discussion of the data and methods employed in this chapter.

Like the Mexico case, I find that the key moments in determining judicial success of EJE investigations is when government officials with the power to change the judicial fate of a case meet with an advocate group who serves the role of interlocutor. In the Colombian case, the advocate role was played primarily by personnel from the UN High Commissioner for Human Rights. The Colombian office of the UNHCHR is the largest in the world, and with 100 staff people and more than 20 years of experience on the ground, this can be said to be an important, if not crucial case, for measuring its success. The UNHCHR made the false positives scandal a primary of focus of its activities for many years, and analyzing its effectiveness is important for all those who consider the possibilities of the UNHCHR in promoting rule of law and judicial transformation.

In the case of EJEs, a broad coalition of Colombian NGOs effectively filled the activist role, documenting cases and bringing them to the UNHCHR, applying consistent pressure to the Colombian state to change their actions through mobilization and media campaigns, and involving international state and non-state allies to bring pressure on the Colombian state. This activist role looks slightly different than in Mexico, largely because of the different histories of the struggle for human rights in each country. By the time the false positives scandal emerged as the primary human rights issue in Colombia, Colombian NGOs had about three decades of experience organizing against state-perpetrated violence. This enabled these organizations to build large coalitions, with the effect being a latticework of organizations that have representation in most of the Colombian state. It also enabled them to go through a rigorous professionalization

process (see Tate, 2007: Ch 3) that focused on coalition-building, accurately documenting human rights abuses and transparently disseminating this information.¹⁴⁸

These hard-won achievements, I argue, are the base on which the revelation of the practice of false positives and the subsequent judicial successes has been possible.

In Chapter Five, I documented the early efforts by Colombian civil society organizations to respond to human rights abuses, and discussed how these groups interacted with the UNHCHR over the course of several decades. In this chapter, I trace the emergence of the false positives scandal and map how state and non-state actors collaborated to produce institutional change. I highlight key moments of institutional change that demonstrate how dialogue around specific cases and the persuasion and empowerment of actors inside of the Colombian government led to the judicial successes discussed above. Finally, I address alternative explanations for the changes in judicial outcomes. The main alternative explanation in the literature on judicial outcomes focuses on how changes in specific laws and legal systems affect judicial behavior. I find that changes in laws and training were important tools employed in changing state behavior, but that it took the synchronized, sequenced actions of this network of anti-impunity actors to activate, and in some cases make, these laws and institutional changes.

¹⁴⁸ Broad-based coalition work and documentation are common goal for civil society organizations working with grave human rights violations, but are often very difficult to achieve. The *Madres de la Plaza de Mayo* in Argentina, for example, split into different factions, and currently there are two different groups that march simultaneously in the Plaza with their backs to each other. In Mexico, as I discussed in Chapters two and three, there are acrimonious relationships between the civil society groups working with family members of the disappeared. Particularly in the case of family members of the disappeared, because the lives of loved ones are at stake with strategic and political decisions, and because the people making the decisions are often traumatized themselves, divisions among these groups are quite common.

I posit a generalizable theory based on this evidence: that for substantive, lasting changes in judicial behavior to occur, there must be three pillars in place: advocate pressure, activist pressure, and sufficient institutional openness.

II. Extrajudicial Killings, False Positives and Shifting the State

As of 2013, the judicial success rates for most violations of the right to physical integrity remained abysmal in Colombia. As I demonstrated in the previous chapter, small, victim-led NGOs succeeded in obtaining modest judicial successes in a very small number of cases. Apart from NGO-led victories, judicial successes were quite rare in these cases. For cases of homicides, only 5.7% of cases resulted in trials or sentences. For cases of enforced disappearances, the results were much worse: only .2% of all reported cases committed between 2002 and 2010, 84 of over 48,000 cases, proceeded to trial or sentencing.¹⁴⁹ As of 2009, judicial results for cases of extrajudicial killings were similar: only two percent of cases - 30 of 1380 cases - had proceeded to trial or sentencing. By 2013, however, the results jumped dramatically: 475 of 3,977 cases, or almost 12 percent, of cases of EJEs had proceeded past the indictment phase. (See Appendix 2 for further judicial status information for these cases). What accounts for this improvement in the judicial success of cases of EJE between 2009 and 2013, and as compared to other cases of violations of the right to physical integrity?

¹⁴⁹ The figures for enforced disappearances are especially significant in understanding the magnitude of the improvements in judicial outcomes for extrajudicial killings, as many of these crimes are classified as enforced disappearances (extrajudicial killings is not a legal term).

A. Civil Society Activists find an Advocate in the UNHCHR

Human rights organizations had pressured the Colombian government since the 1980s¹⁵⁰ on the issue of extrajudicial killings. Most of the early documented cases of extrajudicial killings were in Medellín, the capital of Colombia's largest and most populous state, Antioquia. Medellín had been a center of much of the political violence of the 1970s and 80s. However, in 1995, *Corporación Jurídica Libertad*, CJL,¹⁵¹ noticed that the victims of enforced disappearance had a different profile than other cases they had seen. The victims were young men from the poorer neighborhoods of the city who did not have any clear political affiliation. Most of them had disappeared while they were looking for work, and there were reports that they had been promised work picking coffee and set off with these "job recruiters."

CJL and human rights groups tried to raise these cases with the state, but had been frozen out. They could not get meetings with the officials charged with investigating these cases, and the cases in which they had denounced these disappearances were categorically stalled: they had not succeeded in getting a single case of this type of disappearance indicted, much less brought to trial or sentenced. CJL employees were also receiving threats from paramilitary groups at the time for their work on another set of cases that implicated members of the military in human rights abuses. Limited to "activist" status

¹⁵⁰ The first cases of extrajudicial killings happened as early as 1984. Civil society organizations, most prominently ASFADDES, Association of Families of the Detained and Disappeared in Colombia, have documented thousands of cases since then, most prominently the Trujillo Case. The UN Special Rapporteur on Extrajudicial Killings had reported cases similar to the Soacha case to the Colombian government since the mid-1990s.

¹⁵¹ CJL is part of MOVICE, the State Movement of Victims of State Violence, and is functionally their representative on the ground in the state of Antioquia. They give legal representation to victims of violent crime, and also support the organizational processes of the victims. They attend to cases that are sent to them by other organizations.

by their lack of access to state officials, CJL sought out UNHCHR officials, with the hope that they would be able to raise the occurrence of this alarming new pattern of violence with state officials. In 2003, after extensive documentation, CJL discussed these new patterns of disappearances they were seeing with the UNHCHR in Medellín.

Over the course of 2004 and 2005, UNHCHR staff met with various state officials in Antioquia, raised the issue of these alarming disappearances, and presented the cases that CJL had documented (and that UNHCHR officials had subsequently independently documented and verified).¹⁵² In 2006, the government formalized this space by creating the Antioquia Committee for Human Rights, which by studying the cases that CJL had documented, realized what the NGO and UNHCHR had already concluded:

The sub-office [of UNHCHR in Medellín] strengthened its contacts with the *Personería* [local prosecutors], the Ombudsman, the Regional Procurator's Office and the Attorney General's Office and asked about the information that these oversight bodies had. Little by little the contacts increased and strengthened until sufficient trust was established to exchange cases, define patterns and form an inter-institutional network for work. In other words, in this inter-institutional look at the situation it was possible to establish that it [the practice of disappearing and killing young men] was not a matter of isolated cases but rather seemed to be a matter of a deliberate strategy of the 4th [Army] Brigade, which presented itself as the most successful in the implementation of the democratic security policy with more achievements and results' (interview 19). (Salazar, 424).

In the meantime, Colombian human rights groups were continuing to document more and more cases of extrajudicial killings that followed this disturbing pattern, and in 2006,

Colombian human rights NGOs launched a concerted effort focusing on extra-judicial

¹⁵² UNHCHR officials were having much better results in Antioquia than at the national level during this period. Salazar describes several stages of UNHCHR intervention with the Government of Colombia over the issue of extrajudicial killings. The first period, spanning 2003 – 2007, which he calls quiet diplomacy, entailed raising the issue of extrajudicial killings quietly in private meetings and through letters sent primarily to the Ministry of Defense. These letters highlighted specific cases of extrajudicial killings. These letters were ignored, and possibly not received. Several insiders believed that there had been an official policy to throw out letters sent by the UNHCHR to ensure that they were never seen by the Minister (Salazar, 426).

killings, which they called the *Mesa de Trabajo sobre Ejecuciones Extrajudiciales*, or Working Group on Extrajudicial Executions.¹⁵³ In October of 2006, this coalition of NGOs presented evidence of 98 extrajudicial hearings at a hearing of the Inter-American Commission on Human Rights (IACHR).¹⁵⁴ Organizations in Antioquia published a report the following March on 38 executions in eastern Antioquia, where the practice was especially pervasive.¹⁵⁵ Shortly after, the human rights organizations of the *Mesa*, led by CCEEU (of which CJL is a member), brought together a small group of human rights professional from the United States, United Kingdom, France, Germany, and Spain for the first international observation mission on extrajudicial killings. This group visited Colombia between October 4th and 7th, 2007, and produced an initial report.¹⁵⁶ These groups returned to the IACHR, and on October 10th, 2007, participated in another hearing where they presented further evidence of the practice of extrajudicial killings.¹⁵⁷ All of this information, including case-level details, was also given to the UNHCHR, and UNHCHR passed along these cases to the Colombian government.

¹⁵³ See '*Observatorio de derechos humanos y derecho humanitario de la Coordinación Colombia-Europa-Estados Unidos: Boletines trimestrales sobre ejecuciones extrajudiciales entre 2008-2010.*

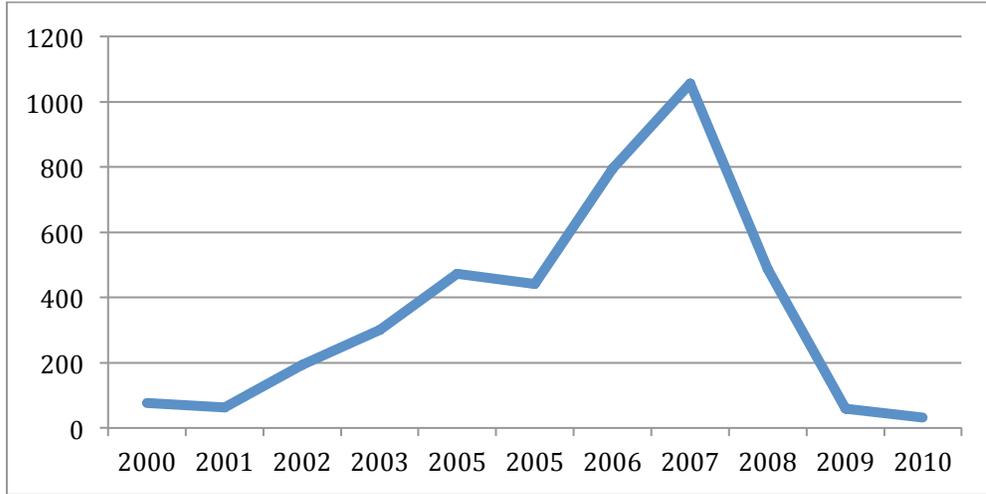
¹⁵⁴ Coordinación Colombia-Europa-Estados Unidos, *Falsos Positivos: Ejecuciones extrajudiciales directamente atribuibles a la Fuerza Pública en Colombia, julio de 2002 a junio de 2006*, audiencia ante la Comisión Interamericana de Derechos Humanos, 23 de octubre de 2006.

¹⁵⁵ Coordinación Colombia-Europa-Estados Unidos, *Ejecuciones extrajudiciales: el caso del oriente antioqueño*, marzo de 2007.

¹⁵⁶ Informe Preliminar de la misión internacional de observación sobre ejecuciones extrajudiciales e impunidad en Colombia. Bogotá, 2007

¹⁵⁷ *Observatorio de derechos humanos y derecho humanitario de la Coordinación Colombia-Europa-Estados Unidos: Ejecuciones extrajudiciales directamente atribuibles a la Fuerza Pública en Colombia, julio de 2006 a junio de 2007.*

Figure 6.2 Total Number of cases of Extrajudicial Executions



	2000	2001	2002	2003	2005	2005	2006	2007	2008	2009	2010
Total # of executions	77	63	193	301	473	441	794	1056	487	59	32

Source: Consolidated CCEEU database

B. Colombian Government Responds: Cracks in the Armor

While the Colombian government appeared to be doing very little to respond to the concerns the UNHCHR was raising from 2004 – 2007 to anyone outside of government, there were in fact internal shifts occurring in response to this pressure that would lay the groundwork for both significantly reducing the practice of false positives, and holding perpetrators responsible. One of the first indications that government policy and practice might be shifting in regard to human rights came with a little-noticed administrative change: a Memorandum of Understanding was signed between the between the Ministry of Defense and the Attorney General’s Office on June 14th, 2006 which established the right of the (civilian-led) Attorney General to investigate the crime scene after a combat-related death. This changed the status quo for combat-related deaths being investigated only by the Military Police and Justice. The Military Justice System had been widely criticized for protecting its own, and the IACHR had demanded that practices be changed

in order to facilitate victims right to access justice.¹⁵⁸ This memo would be the first indication that the Colombian government was willing to allow civilian oversight of the actions of the armed forces.

The next sign that things might be changing came with changes in key leadership positions. In July 2006 future president Juan Manuel Santos became the Minister of Defense, and in July the leadership of the Army changed as well, with Freddy Padilla de León assuming the post of Armed Forces Commander.¹⁵⁹ In 2007, Defense Minister Santos appointed the first-ever civilian to run the military justice system – Luz Marina Gil. Among her first actions was to propose reforms to the military justice code so that it explicitly recognized that the military justice system did not have jurisdiction over human rights abuses.¹⁶⁰ Concurrently with these relatively progressive appointments, however, came the appointment of hard-liner General Mario Montoya to the top post in the

¹⁵⁸ Salazar 432: ‘In 2006 it was observed that all of the cases attributed to the 4th Brigade had been closed by the military criminal justice system. . .’ (UNHCHR Colombia: Causas de las ejecuciones extrajudiciales. Internal paper. Bogota , 2010, p. 4); see also [El Espectador, 2006b](#).

¹⁵⁹ Padilla remains a controversial figure, whose legacy on human rights is highly disputed. Salazar (2012, p.53) cites several high-level Defense Department sources who claim Padilla was an important ally in efforts to curtail EJE: “Several stakeholders said that progress in the fight against extrajudicial executions depended very much on the capacity of the civilians in the Ministry of Defense for building alliances with high-ranking, reform-minded officers like General Padilla. ‘It may be that confidence [in the Office] and political advances were made possible by a specific group of key people – and without the opening of Minister Santos and, above all, without the support of General Padilla, it would not have been possible to act (interview 21).’” Salazar also quotes internal US cables re: Padilla’s role (p. 56): ‘Padilla said he remains committed to removing military personnel believed to be involved in improper criminal activity or human rights violations, even if there is insufficient evidence to bring legal action against them. He asked if the USG [US Government] could help the GoC [Government of Colombia] identify such individuals’ (US Embassy, 2008a). He made a similar statement in another meeting with the US Ambassador meeting one month later (US Embassy, 2008b).

¹⁶⁰ “UNHCHR also advocated directly with President Uribe and Minister Santos for their support to the final text of article 3 in the new military code – with an important result: ‘Without the support of the Office it wouldn’t have been possible to advance in the reform of the military justice’” (interview 11). Salazar, 435:

Colombian army. Montoya was an enthusiastic supporter of Uribe's democratic security policies and known for his hostility to human rights concepts and groups. He had been the commander of the 4th Brigade in Medellín from 2001-2003, the Army brigade with the highest number of reported extrajudicial killings.

While Montoya generally behaved in a hostile manner towards human rights, he made one decision that would have unforeseen positive repercussions for deterring EJE: after the UNHCHR presented 99 cases of extrajudicial killings to the Ministry of Defense in 2007, Montoya invited UNHCHR personnel to visit local military commanders to discuss the cases. Defense Ministry officials came to the meetings, and saw that the military's explanation for these killings didn't add up. According to several interviewees, this was the key moment in persuading these officials to take a stand against the practice. They saw that the seemingly outlandish accusations against the army, which they had until then been able to dismiss as the leftist rantings of groups bent on destroying the Uribe administration, were in fact largely true. As the army's explanations of the facts that the UNHCHR had carefully documented unraveled at these meetings, civilians inside the defense ministry began to accept that their own armed forces were kidnapping and killing Colombian civilians in order to obtain professional accolades and rewards. As their disbelief turned to outrage, those working to end the practice of extrajudicial executions gained allies that would prove to be vital in changing institutional behavior.

Even with these new allies within the Defense Ministry and the coordinated action of the UNHCHR and civil society groups, change may not have been possible if the practice of

false positives had not begun to undermine Uribe's war strategy against the FARC. Uribe's policy of "democratic security" had, according to many Colombians, made great strides in the first years of his administration. By most accounts, his policies succeeded in militarily weakening the FARC, and security in Bogotá and Medellín had improved. While extrajudicial killings were long used to target leftists within the country, the practice of killing civilians with few political ties, once exposed, began to present both a military and political liability. For democratic security to succeed, popular support for the FARC and other guerrilla groups needed to be eroded and support for and trust in Colombia's armed forces increased. A series of directives given by Defense Minister Santos sought to institutionalize this shift in strategy. Perhaps most importantly, Permanent Directive 300-28, issued in November, 2007, redefined how the army would measure its operational results, and attempted to shift away from the body-count mentality mentioned earlier. This directive states: "Collective and individual demobilizations should be favored over captures, and these in turn over deaths in combat. The death of leaders should be stressed, as they have greater importance."¹⁶¹

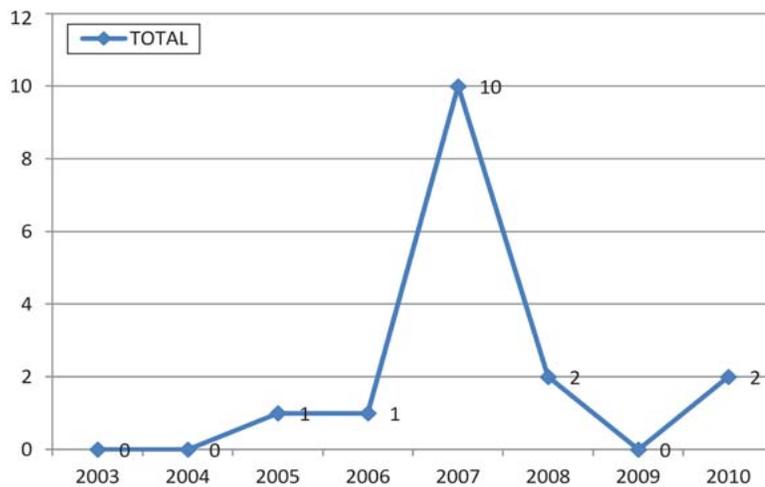
In order to accomplish the public and political repositioning of the army, the public scandal of the false positives, therefore needed to be presented as an aberration. Santos was frustrated that orders he had given prohibiting the commission of executions were

¹⁶¹ From *Directrices del Comando General de las Fuerzas Militares sobre Derechos Humanos y DIH en Colombia*, available online: http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Directivas%20DDHH%20CGFM%20ES%20P.pdf, accessed April 27th, 2014. The US Embassy, in a cable released by wikileaks, characterized this directive as follows: "Directive 300-28 responds to criticism by the local UN High Commissioner for Human Rights (UNHCHR) office and human rights groups that the military's previous use of bajas as the primary measure of success has promoted extrajudicial killings by security forces. The UNHCHR will visit the seven divisions within the Colombian Army in December to review all reported cases of extrajudicial killings with local commanders. The visits follow a similar UNHCHR exercise in August." <https://wikileaks.org/cable/2007/12/07BOGOTA8367.html>

ignored (See below). Taking action against the most prominent cases of false positives became a way to increase legitimacy of the Army, both for domestic and international constituencies.

Figure 6.3 Government Decisions related to Extrajudicial Executions 2003– 2010

Number of policy documents, directives or decrees issues by Presidency, Ministry of Defense, or the Colombian Armed Forces related to extrajudicial executions



Source: Salazar, 2012: 413

In June of 2007, a frustrated Santos took an important institutional step: he issued a Decree (“Decree 10”) designed to prevent “homicides of protected persons,” namely, civilians who were being targeted by the army for extrajudicial execution. Importantly, this Decree led to the creation of the governmental committee:

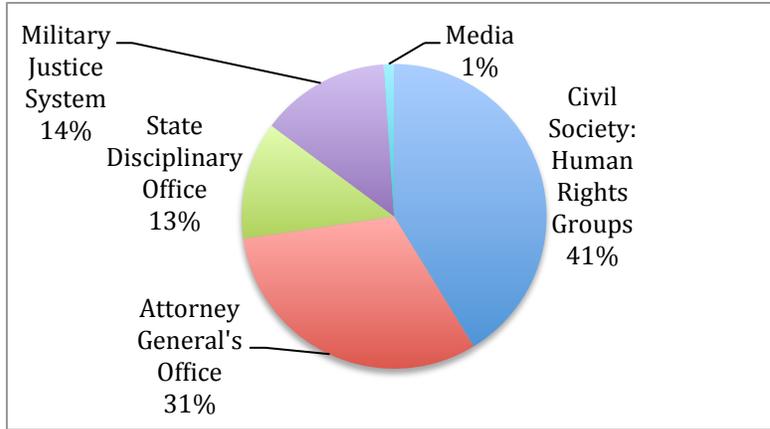
The Decree 10 Committee became an important space for a joint review of cases, monitoring of the situation and the discussion of preventative measures. It was chaired by the Minister himself and composed of the highest commanders of all military branches as well as the Director of the Human Rights Program of the (Vice) Presidency, the Director of Military Justice, the Attorney General and the Procurator General. UNHCHR and the ICRC [International Committee of the Red Cross] were invited to the meetings as observers.

The creation of the Decree 10 Committee was an important political signal and an official acknowledgement that cases of extrajudicial execution were taking place. It established an institutional accountability: the Ministry of Defense assumed the political responsibility for extrajudicial executions. Before that, no state body was officially 'in charge' of this issue. The Committee provided a platform for discussion of cases between military authorities, civilian authorities and the international community. It made it very difficult for the military to dismiss the cases. Those pursuing the traditional discourse of denial lost ground (Salazar, 2012, 417-418).

The Decree 10 Committee consistently faced challenges in obtaining information about cases of extrajudicial executions, largely because the army had no interest or institutional incentives to provide this information. One of Salazar's interviewees explained that "There were many rumors in the Ministry on extrajudicial killings but it was very difficult to get concrete information. This took some time, and was the most difficult. UNHCHR was very important to provide this information for decision-makers" (417).

Where did the cases come from that these governmental/UN working groups were reviewing? Since reporting cases to the Colombian government was often dangerous and the investigations were seen as ineffective or non-existent, the civil society organizations had organized themselves to document these cases. By 2011, the *Mesa de Trabajo* had received reports of 3,512 cases of extrajudicial killings between 2002 and 2010, up from 739 cases between 1994 and 2001. The plurality of documented cases, 41 percent, came from this network of civil society and human rights groups that made up the *Mesa*.

Figure 6.4 Who Documented Cases UNHCHR presented to Colombian Government?



According to both the UNHCHR and the *Mesa*, the UNHCHR used the *Mesa's* database of cases as their primary source.¹⁶² While the UNHCHR did independent verification of these cases, they worked hand-in-hand with the *Mesa* groups to document the cases, and then to follow up on their progress.

C. Soacha Case Ignites Public Furor

In the context of this mounting NGO and international attention and internal debate over the practice of EJE, the Soacha scandal became a watershed moment in generating the political will necessary to both decrease the instances of extra-judicial killings and to prosecute those military personnel responsible for the abuses. Press coverage of extrajudicial killings exploded in September 2008 (See Table below). Demonstrations broke out throughout the country, and were capped by a May 1st, 2009 demonstration in which thousands marched

¹⁶² In the UNHCHR's 2011 report, they say "based on the existing data about cases and victims, the Office of the High Commissioner in Colombia estimates that more than 3,000 people may have been victims of extrajudicial killings, attributed primarily to the army. The great majority of these cases occurred between 2004 and 2008." Annual report of UNHCHR, 2010: page 12

against extrajudicial killings in Bogotá.¹⁶³

How did this case come into the spotlight?¹⁶⁴ In August 2008, several mothers began running into each other repeatedly at the local prosecutors' office in Soacha, a poor city bordering Bogotá to the south. All of them were looking for their sons, between the ages of 18 and 30, who had left home either on their way to work or to look for work, and hadn't been seen again. Day after day, as they sat in the cramped waiting rooms of state judicial officials, they got to know each other. They talked about their sons, how out of character it was for each of them to leave home without any notice, and they became convinced that the same fate had befallen them all.

Despite their increasing unease at to the fate of their sons, they were unsure of how to channel their frustration. They had gone through official channels – the police, the prosecutors' office – and were getting nowhere, though they did find an important ally in one local official who agreed to help them find their sons. In September 2008 MOVICE, Colombia's Movement of Victims of State-perpetrated Crime, happened to hold an event in the Soacha, and one of the mothers, Luz Marina Bernal (not to be confused with Luz Marina Gil), approached the MOVICE representative. This meeting would prove historic: MOVICE immediately

¹⁶³ See footage from the movie "Falsos Positivos"(2009). This demonstration was dispersed by government forces with tear gas. Available at <http://www.youtube.com/watch?v=Srxt7bGBsr4>

¹⁶⁴ The issue of "paradigmatic cases" came up often during my research: many NGOs concentrate on only a small number of cases that they see as illustrative of larger patterns of violence, with the hope that by winning or publicizing one or a small number of cases, there can be spillover effects that will eventually lead to transformation in the way the state handles many cases. By closely examining the role of the Soacha scandal, I am examining how a single set of cases can transform state repressive and judicial practices. I seek to underscore the mechanisms and processes that underlie a successful case of institutional transformation.

connected the mothers with two of the prominent externally funded, professional organizations with full-time human rights lawyers on staff mentioned earlier: CCAJAR, a lawyers collective (*Colectivo de Abogados José Alvear Restrepo*) and the Committee (*El Comité de Solidaridad con Presos Políticos*). These organizations would carefully document each of these cases, join with other organizations, including MINGA, another human rights organization, and share these cases with the press. As shown below, press coverage of extrajudicial killings grew exponentially in the 12 months following the revelations about the Soacha case.

Figure 6.5 National Newspapers Coverage of Extrajudicial Executions 2003–2010
Number of articles in Colombia national print media mentioning extrajudicial executions

	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
2003									1				1
2004				1		1		1	1				4
2005			1	1	2	1							5
2006		9			3	7	6	5	16	7	2		55
2007	2	2	8		6	1	4	1	1	8	1		34
2008	8	1	3	3	1	1	2	3	28	42	43	2	137
2009	23	4	11	19	48	64	6	17	6	17	5	7	227
2010	27	10	6	6	16	2	5	5	11	8	2	4	102

Source: Salazar 2011: 411

One additional factor contributed to the political resonance of the Soacha scandal: the cases were located in Bogotá, the capital of the country. This made the *Madres* accessible to the press in a way previous cases hadn't been. Colombia is a large country divided into three sections by the Andes mountains. Many of the human rights abuses happen in rural areas that are dangerous, difficult to reach, and technologically cut off from the rest of the country. The proximity of the *Madres* to reporters and legislators made these horrific stories accessible to Colombia's powerbrokers in a way rarely seen before.

D. The Colombian Government's Response to Soacha: Accountability at Last?

On October 29, 2008, a little over a month after the revelation of the Soacha scandal in the press, President Uribe suspended 27 military officers because of their roles in the disappearance and subsequent execution of the young men in Soacha.¹⁶⁵ Those dismissed included two division and three brigade commanders, and Army commander Mario Montoya resigned shortly thereafter.¹⁶⁶ Judicial convictions for several of those directly responsible for the Soacha killings would follow: five soldiers and their commanding officer were sentenced to 52 to 54 years in prison each, received hefty fines, and were found guilty of the crimes of forced disappearance and crimes against humanity.¹⁶⁷ Although apart from this administrative action little judicial action has been taken against army commanders, many saw the dismissal of Army officers as concrete evidence that committing executions would no longer lead to career advancement for Army officials.¹⁶⁸ This represented the highest-level repudiation of the “body count mentality” long advanced within the Colombian military, which rewarded soldiers with extra pay, vacation and career advancement in exchange for killing guerrilla fighters.¹⁶⁹

¹⁶⁵ According to US Embassy cable: http://www.wikileaks.org/plusd/cables/08BOGOTA3959_a.html

¹⁶⁶ Simon Romero, “Colombian Army Commander Resigns in Scandal Over Killing of Civilians,” *The New York Times*, 4 November 2008.

¹⁶⁷ A detailed chronicle of the sentencing of the soldiers is available (in Spanish) at: <http://periodismohumano.com/en-conflicto/cronica-de-una-sentencia-historica-los-falsos-positivos-de-soacha-son-crime-nes-de-lesa-humanidad.html>.

¹⁶⁸ The dismissal of the officers “is a triumph for human rights organisations and for Colombian society as a whole,” said Reynaldo Villalba of the José Alvear Restrepo Lawyers Collective. <http://www.ipsnews.net/2008/10/rights-colombia-extrajudicial-killings-under-scrutiny/>. Accessed 3/23/2014

¹⁶⁹ See “Body count mentalities” *Colombia’s “False Positives” Scandal, Declassified*, By Michael Evans <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB266/>

While most observers would agree that Uribe suspending members of the military for their participation in extrajudicial killings was an important step towards decreasing its practice and beginning to hold military personnel accountable for their actions, it is far less clear why Uribe changed his stance. Had the Soacha scandal convinced Uribe that human rights were important? Uribe frequently said publicly that human rights critiques were inspired by guerrillas and their sympathizers had been hostile to claims of human rights abuses by the Army. Indeed, shortly before he suspended these officers, he had said publicly that the young men from Soacha “were killed in combat, they weren’t going to pick coffee, they went with criminal purposes.”¹⁷⁰ Why did he end up changing his response so dramatically in the Soacha case? The changing military incentives discussed earlier certainly played a role. However, international political pressure also appears to be important: Uribe’s dismissal of military personnel involved in the execution in Soacha coincided with a visit to Colombia by the UN High Commissioner for Human Rights. In 2007 and 2008, Colombia also was lobbying intensely for Congressional ratification of the Colombia-U.S. Free Trade Agreement. As the US Embassy applied pressure to the Government of Colombia to cease the practice of extrajudicial executions, presumably this pressure had increased relevancy given trade talks.¹⁷¹

¹⁷⁰ “Los jóvenes desaparecidos de Soacha fueron dados de baja en combate, no fueron a recoger café, iban con propósitos delincuenciales”: “Uribe se aclara que no se sabe si jóvenes murieron en combate,” *Semana*, 7 octubre 2008.

¹⁷¹ “Ambassador Discusses Wealth Tax, Human Rights with Defense Minister Santos,” 21 December 2006, cabled published by Wikileaks.

E. Military backlash and the Struggle Against Impunity

Uribe's actions holding military officers responsible for human rights violations were, unsurprisingly, not received well by the military. Demanding accountability for extrajudicial executions would be a career-ender for some – as the retirement of Montoya had illustrated – and for others could even mean jail time. As the implications of Uribe's pronouncements sunk in, the military began to mobilize itself to resist these measures.

It had long been a demand of human rights organizations, the Colombian Constitutional Court, and international bodies (UN Human Rights Council, 2011: para. 27) that Colombia recognize that its military justice system could not have jurisdiction over human rights abuses. In 2007, when Defense Minister Santos appointed civilian Luz Marina Gil to run the military justice system, among her first actions was to propose reform the military justice code so that it explicitly recognized this limit to the military justice system's jurisdiction.¹⁷² One of the first victories of these counter-reform efforts was the firing of Gil. This led to a sharp reduction in the number of EJE cases being transferred by military judges to the civilian justice system (see UN, Human Rights Council, 2011: para. 28).

Before she was fired, however, under Gil's watch many cases had been successfully

¹⁷² In December, 2007, a US Embassy cable made public by wikileaks characterized Gil's progress as follows: "The MOD [Ministry of Defense] is also working with the Military Justice system to facilitate the transfer of cases involving alleged human rights violations from military to civilian courts. In 2005 and 2006, the military courts transferred seven cases and 33 cases to the civilian system respectively. In contrast, so far in 2007 the military courts have transferred 572 cases, 155 of which involve alleged homicides. The increase reflects the effort of Military Justice Director Luz Marin Gil, as well as the impact of the high-level committee set up in June under Directive 10 to address the problem of extrajudicial killings." <https://wikileaks.org/cable/2007/12/07BOGOTA8367.html>, Accessed 4/27/14

transferred to the National Human Rights Unit (NHRU), the Bogotá-based department within the Attorney General's office charged with investigating human rights violations. This unit, which had struggled previously with insufficient resources and lack of access to the military personnel they were supposed to be investigating, now had its work cut out. The UNHCHR had expended significant amounts of time building relationships with members of the Attorney General's office, and made "defending" the reforms introduced in 2007 and 2008 against the "counter-reforms" a main focus of their work after 2009 (Salazar, 436).

[The UNHCHR] shared cases with the Attorney General's Office, facilitated access to victims and witnesses and requested special protection for prosecutors facing threats. It helped the prosecutors to get access to military camps and to the military justice system. UNHCHR observed judicial proceedings – for example in the Soacha case – and strengthened due process by being present in courtrooms and at exhumations of victims (interviews 9, 14, and 22). (Salazar, 435-6)

According to one of the prosecutors interviewed by Salazar, UNHCHR's actions gave strong initial impetus to judicial investigations on extrajudicial executions as well:

I knew the subject [of extrajudicial executions] as a result of letters from the Office [UNHCHR] that arrived at the FGN [Fiscalía General de la Nación]: 20 cases in 2008. Furthermore, I studied the reports from UNHCHR on the subject. In the wake of this information, the Human Rights Unit of the Prosecutor sent special commissions to [Colombian cities] Medellín and Villavicencio for 60 days to investigate the 20 cases presented by the Office and that were filed in the Military Criminal Justice. These investigations confirmed the seriousness of the cases and that they were not being investigated by the Military Criminal Justice and other institutions. Following this work the Human Rights Unit assumed these cases. This led to a confrontation between the Prosecutor and the militaries (interview 9).

As these quotes imply, the confrontations between the investigators within the Attorney General's office and the military did turn violent.¹⁷³ In its 2009 annual report, UNHCHR

¹⁷³ In one of the early investigations conducted by the Attorney General's Office into an extrajudicial killing, a team of special prosecutors was kidnapped during their investigations in Putumayo. UNHCHR

cited concerns regarding the safety of military judges and witnesses who collaborated with the civilian prosecutors in the investigations of extrajudicial executions, (UN Human Rights Council, 2010a: para. 42). In 2010, the US Embassy reported that three military witnesses of extrajudicial executions were attacked, two of whom were killed (see description of the cases in US Embassy, 2010b). High-level officials I interviewed discussed the importance of interviewing members of the armed forces while being accompanied by members of the UNHCHR: their presence was seen as a deterrent to violent reprisals against them.

F. Reflections

Breaking the judicial inertia that virtually guarantees impunity, especially for members of the military, is a particularly difficult institutional outcome to achieve. In Colombia, there were powerful and dangerous actors within the military whose careers and freedom rested upon preserving the status quo. Addressing the root causes of the false positives scandal required that civilians within the government risk their lives in order to confront these members of the military. This kind of sacrifice is not one that can be leveraged by political pressure alone – rather, as one senior-level interviewee told me, “in order to confront those political networks, you have to be convinced that this is something you really want to do.” This chapter is largely about how the advocate/activist coalition used information to persuade civilians within the Colombian government that ending the practice of false positives and total impunity for these crimes was something they really

officials intervened on their behalf, which resulted in their rescue. Several of Salazar’s interviewees “mentioned how important this intervention was in establishing a close working relationship between UNHCHR and the Attorney General’s Office” (interviews 22 and 9) (Salazar, 436).

wanted to do. The key advocate organization, the UNHCHR, then negotiated a complex political environment to empower them to do it. Key to this story are relationships and consistency: civil society and the UN collaborated for decades to build the necessary trust to leverage this pressure, and the UNHCHR staff – a staff of nearly 100 people – self-consciously built relationships with civilians within the Colombian government for more than a decade.

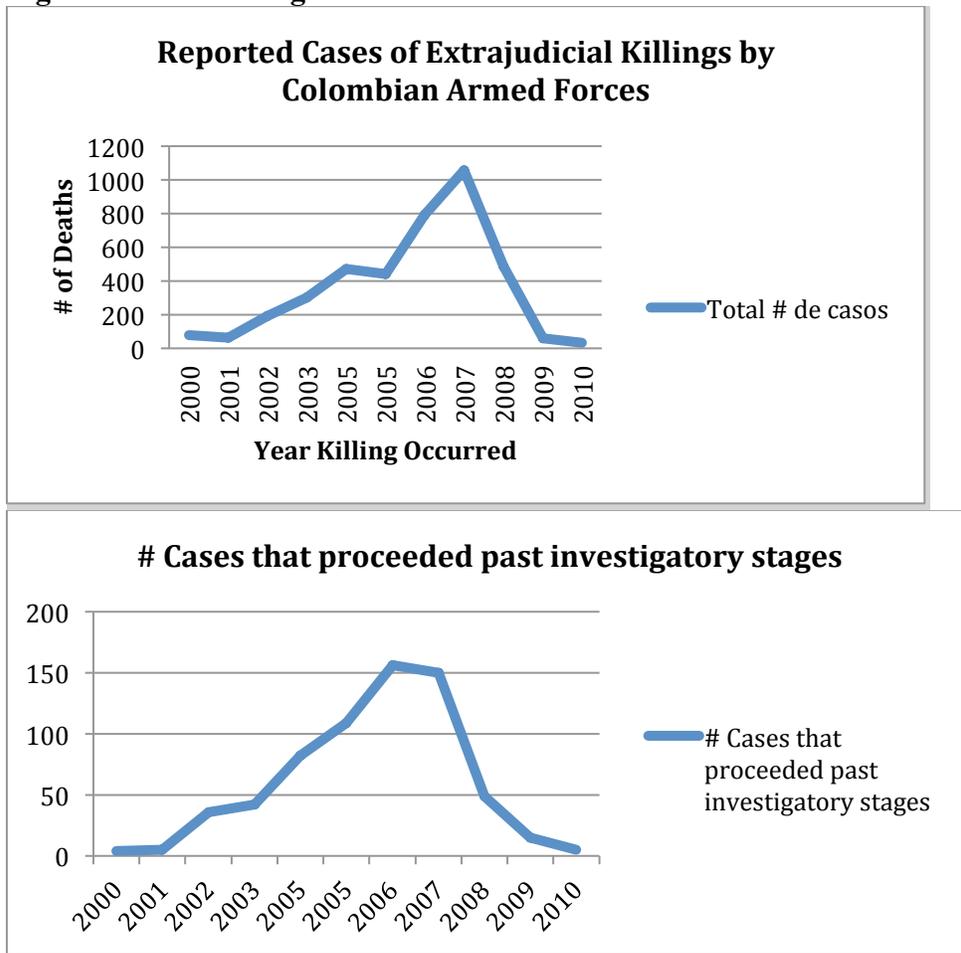
In sum, in the crucial phase of initial investigation of cases that had been transferred to the civilian justice system, the staff of the UN Office of the High Commission for Human Rights played a definitive role. They played the role of advocates, connecting state investigatory officials with victims of crime, and empowering and protecting officials within the Colombian judicial and governing bureaucracy to take a stand against military officials determined to protect themselves and their institution from civilian accountability. Civil society actors continued to generate political will for change by denouncing impunity and the practice of extrajudicial executions, and the UNHCHR was able to work within the apparatus of the Colombian judicial system to accomplish meaningful advances in the provision of justice.

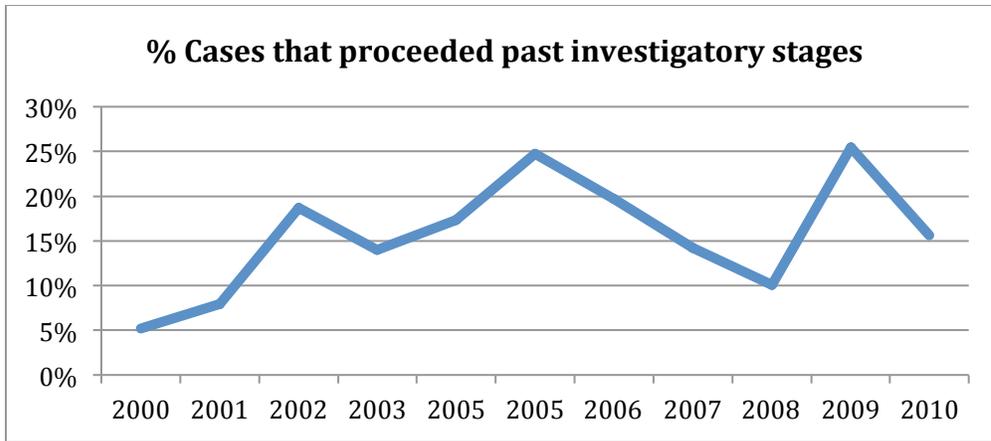
IV. Colombia-Specific Alternative Explanations

While I will systematically address possible alternative explanations in the concluding chapter, there are several alternative explanations specific to the Colombian case that are useful to explore at this point. One plausible explanation for the improvement in 2013 rates of judicial success would be that the cases simply had not had enough time to make it through the justice system in 2009. If this were true, we

would expect to see higher judicial success rates for cases committed earlier. As we see with the distribution below, however, the judicial success rate is not dependent on the year of commission of the killing. Rather, the annual numbers of cases that make it past the reporting stage mirror the annual number of extrajudicial executions. Further, the rate of cases that proceed past the initial stage is erratic rather than steadily increasing, indicating that the passage of time is not a key explanatory variable in determining judicial success.

Figure 6.6 Annual Figures: EJE

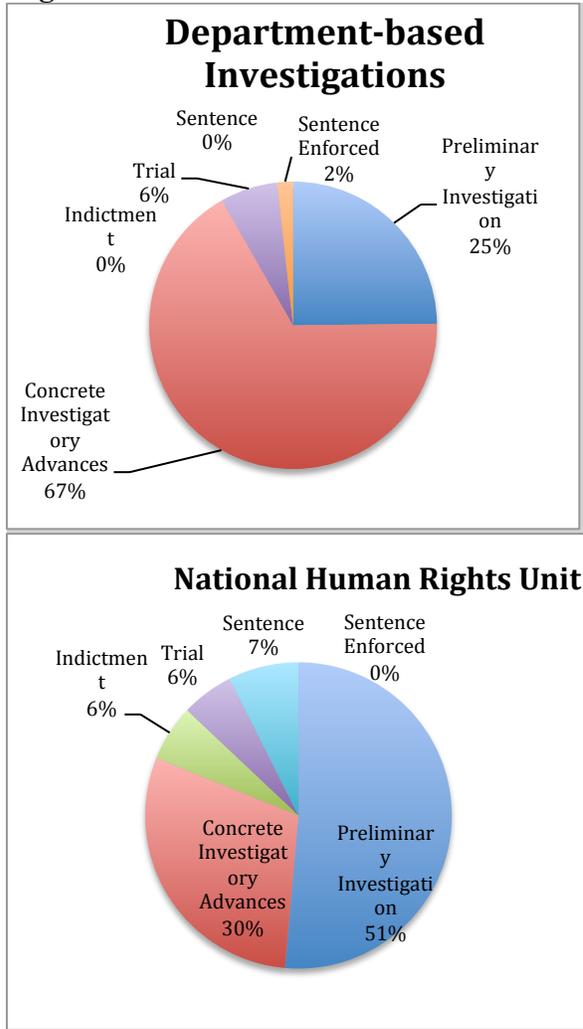




Next, my data include cases investigated by two different investigative arms of the Colombian judicial bureaucracy, the National Human Rights Unit (NHRU) and the judicial officials located in different Colombian departments (*seccionales*). If the NHRU had only a small portion of cases, their “success rates” could be biasing an overall trend in continuing impunity. However, 78 percent of cases are being investigated by the NHRU. This unit, for which I have data for the 2009 and 2013 judicial results, is located in Bogotá, and is the one I speak most about in this chapter. It was the target of the UN’s relationship building in Bogotá, and has taken on many of the higher profile cases of extrajudicial executions. Given that the NHRU has been the focus of UNHCHR and civil society attention, we might expect it to produce much better judicial results. Indeed, the NHRU has been much more successful in bringing cases to trial and obtaining sentences. However, the department-based *seccionales* have had significant advances in the investigatory stage when the results are compared to, for example, cases of extrajudicial killings and enforced disappearances, indicating that the activist/advocate pressure has also influenced their behavior. In sum, it does not indicate that either the NHRU or the *seccionales* display different trends and are biasing results or invalidating the claim of a system-wide transformation in the way the Colombian judiciary is investigating EJE

cases: they both appear to be producing much more positive success rates in cases of EJs than similar cases of other crimes.

Figure 6.7 Performance of Department-based investigators vs. National Human Rights Unit



Finally, throughout the narrative of this chapter, the role of the US government is notably small. While I will more systematically address the role of the United States in changing judicial behavior in the next chapter, in the Colombian context specifically I argue that the US was an important supporting actor that legitimized the advocate work being done by the UNHCHR, but not a decisive player. As shown below, the US did publicly speak

out against extrajudicial executions, in fact more than any other international organization:

Figure 6.8 International Human Rights Reporting on Extrajudicial Killings 2002 – 2011

Number of paragraphs mentioning the term ‘extrajudicial executions’ in annual reports on the situation of human rights in Colombia

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
US State Department		1	20	26	15	20	33	25	22	8	170
UK Foreign Office			1	2	1		1	1	3	2	11
CIDH				1	1	12	15	10	19		58
UNHCHR		3	4	17	16	16	21	15	18	20	130
Human Rights Watch	n/a	n/a	n/a	0	0	0	3	3	4	3	13
Total		4	25	46	33	48	70	51	62	30	382

Source: Salazar, 2012: 410

Despite speaking out against extrajudicial killings, however, the US did not take the lead in advocating for the judicial accountability of government forces. I found that the most decisive action the US took during the false positives scandal was to avoid playing the spoiler: by echoing the concerns of the UNHCHR, the US lent political weight to the UNHCHR’s crusade against extrajudicial executions, and empowered UNHCHR’s local staff to carry out their work.

IV. Conclusion

Systematically changing the performance of judicial systems has proved to be one of the most vexing problems policymakers, academics and advocates face. This chapter presents a rare case of a dramatic shift in institutional performance: the Colombian judicial system’s treatment of extrajudicial killings between committed between 2002 and 2010. Using original interviews with NGOs and victims’ organizations, data on judicial outcomes compiled by this author’s data requests and in collaboration with different

Colombian NGOs, and evidence compiled by an elite human rights actor who had insider knowledge of the Colombian government's actions, this chapter presents a narrative of changing state judicial behavior in which political will was constructed by pro-reform state officials, political insiders who could facilitate information transfer and apply targeted political pressure, and civil society and media advocates, who through their documentation and pressure mounted a focused and unrelenting campaign to end the practice of extrajudicial executions and to hold perpetrators inside the military accountable for their actions.

In the Mexican case studies, civil society actors played the advocate role that in this chapter I describe UNHCHR as filling. Why didn't civil society play the advocate role in Colombia as it did in the Mexico case? And what does this imply for the importance of organized citizen action? In order to play an effective advocate role, groups must have the trust of both the victims and the state. Members of paramilitary and state forces were assassinating human rights workers during the entire false positives scandal. Human rights advocates were consistently labeled guerrillas, accused of working against the Colombian state, and explicitly threatened and attacked with impunity. This meant that the "victims" of human rights abuses included the NGO workers themselves, and rendered them unable to play an impartial, interlocutor role. Simply put, Colombian human rights NGOs could not be advocates while they were targets themselves.

This chapter also highlights the importance of the advocate being physically located at the judicial decision-making site. It is impossible to imagine the UNHCHR being able to

intercede in the governmental decision-making and build the necessary relationships if they had not been physically located within Colombia, and specifically been present in both Medellín and Bogotá. The relationships they built with officials who had the power to make decisions about these cases was the key mechanism in moving these cases forward. In Mexico, the UNHCHR and other international organizations were physically present in Juárez at the height of the backlash against femicides. Though these important international players got to know officials in Juárez and also in Mexico City, where many had offices, they neglected to establish relationships and maintain a presence in the physical location where these cases were being decided: in Chihuahua City, the state capital. In contrast to the boomerang model, then, my account envisions the political blockage between the state and civil society being modified at the point of the contact, rather than leaving the country and being leveraged against the state from afar.

Finally, I illustrate how the nature of targeting judicial behavior requires the active and continuous involvement of civil society organizations. From documenting the first cases of false positive and discerning the pattern of extrajudicial killings, to involving the UN, to successfully framing the key Soacha case, I demonstrate that the elite-level negotiations between the UNHCHR and the Colombian relied upon the actions of civil society for their success.

Chapter Seven:

Towards a Participatory Understanding of the Rule of Law

I. Introduction

A. Summary of Findings

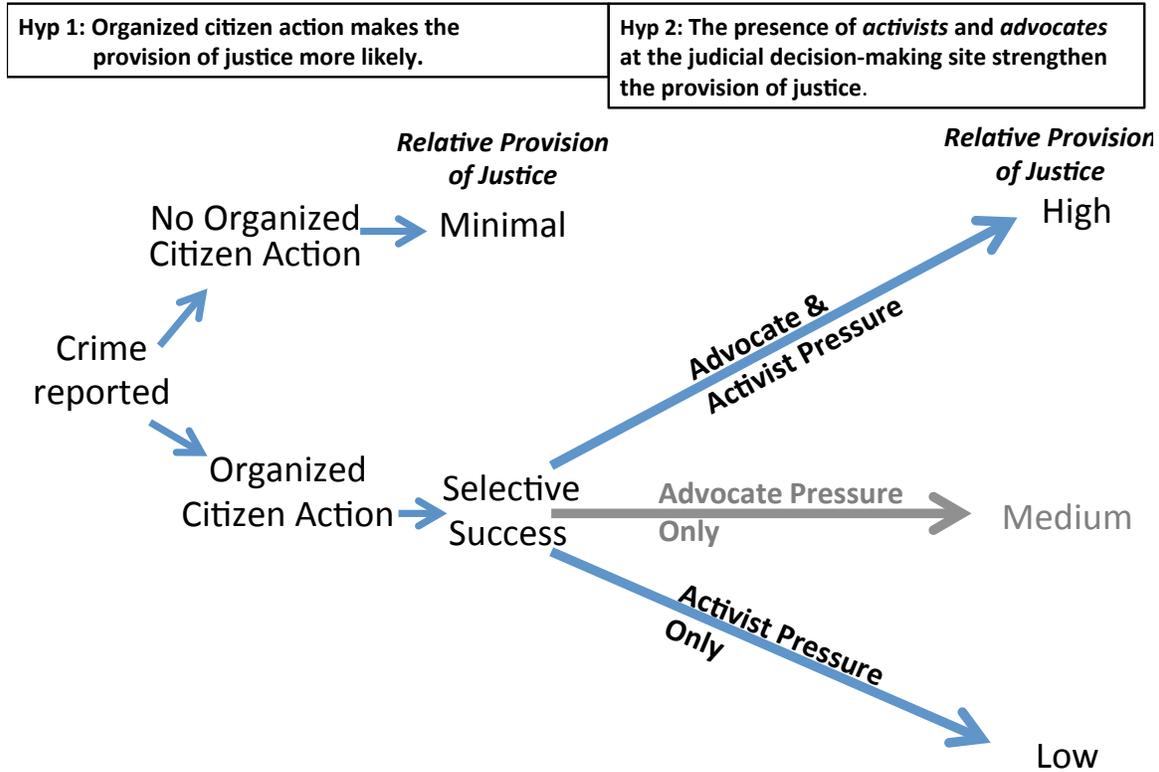
This dissertation has examined the conditions under which judicial systems plagued by bureaucratic inertia can be activated to investigate and prosecute those responsible for crimes that take a life. I have asked why some cases of homicides and disappearances advance through domestic judicial systems while so many others stall. Using a multi-methods and multi-level research design, I have examined this question in Mexico and Colombia, two democracies struggling with violence and impunity. I have shown that cases that are the focus of organized citizen action - protests, media campaigns, meetings with state investigators, collaboration with international allies, and national and international litigation and advocacy – will have much greater judicial success than cases that do not. But what factors influence why some cases, but not others, that have been the focus of organized citizen action achieve judicial success?

Based on extensive fieldwork and the construction of original databases of judicial outcomes from state and non-governmental sources in both Mexico and Colombia, I find that differences in the modes of contention employed by civil society groups and their allies, and the relationships they build (or do not build) with state officials drive relative judicial success. I have constructed two complementary categories of civil society groups and their allies: *Activists* are institutional outsiders who take a consistently and vocally critical role of the state's justice system, generating a political cost to impunity; *Advocates* have

the trust of both the victims and the state, and are able to facilitate the flow of investigative information between the two parties. I find that when both groups are present at the locale in which judicial decisions are made, the combination of political pressure, information sharing, and open routes of communication channels government action into investigatory advances. In contrast, when only activists are present, the absence of relationships between state investigators and the victims of crime will most often lead to cosmetic institutional improvements but little concrete judicial progress in the focus cases. When only advocates are present, usually a temporary situation that occurs after an activist group has transitioned into an advocate and before a new activist group has emerged, the provision of justice will be comparatively moderate, as there is a lack of political pressure being exerted on judicial officials. These hypotheses and arguments are summarized below:

Figure 7.1: Summary of Hypotheses and Findings

What explains why some cases of murders and disappearances achieve judicial success?



II. Alternative Explanations

The findings above draw lessons from cases of relative judicial success. Specifically, in Colombia I find that the jump in judicial success in more than 4,000 cases of extrajudicial executions from 2009 to 2013 is explained by activist pressure paired with advocacy. In Mexico, I find that cases of homicides and disappearances in Chihuahua City, Chihuahua, and to a slightly lesser extent, in the state of Nuevo León, are more than twice as likely to have investigative action taken if they are the focus of organized citizen action. I have argued that activists and advocates, together with allies in state government, have facilitated these judicial advances. What are the alternative explanations for these shifts I describe in the provision of justice? In this section I present four alternative explanations for these results: the first places transnational advocacy networks at the center of the

causal story; the second sees institutional changes, particularly the move from written to oral systems of justice, as driving judicial outcomes; the third focuses on the role of US foreign assistance; and the fourth explores whether advocate selection bias or the demographics of family members of victims involved in advocacy efforts might explain positive judicial outcomes.

A. Transnational Advocacy Networks

International actors and transnational advocacy networks (TANs) play a role in every case presented in this dissertation. This is perhaps unsurprising, given that Keck and Sikkink's star case study in their 1998 book was Latin American human rights networks. The logic of this alternative explanation is quite straightforward: changes in state human rights behavior are driven by transnational pressure leveraged on the offending state by a linked network of local and international organizations. According to this explanation, the greater the pressure exerted by this network – the stronger the boomerang – the more willing and able the offending state should be to punish their own officials and citizens for homicides and disappearances.

If intense TAN activity did cause or correlate with judicial success, we would expect high profile cases of egregious human rights violations that sparked international outrage and pressure to translate into judicial success. In Colombia, the Trujillo case, in which 340 people were massacred by members of the army between 1988 and 1994, drew the ire of the international community. In Mexico, the femicides in Ciudad Juárez, followed by the record-setting homicide rates in 2009 and 2010, similarly mobilized the international

community, drawing together an economically and politically powerful TAN (Anaya, 2011). Yet in both of these cases of intense TAN pressure, virtually no one was punished. In the Trujillo case, there was not a single member of the Colombian army held criminally accountable for his role in the massacre. In Mexico, despite many institutional measures that were taken to improve the provision of justice, solve rates remained abysmal in the Juárez murders and femicides. These cases illustrate that intense TAN pressure is not *sufficient* to produce changes in judicial outcomes.

This is not to say, however, that TANs are not an important, and perhaps even a constitutive part, of effective activist/advocate pressure. The international members of the transnational advocacy networks play important direct and indirect roles in my cases. In the state of Chihuahua, international experts facilitated the transition of the local NGO from activist to advocate by training them in forensic investigation on the one hand, and by vouching for them as a legitimate interlocutor with the state on the other. Colombia-based members of the United Nations Office of the High Commissioner for Human Rights played an even more central role, constructing their advocate position through their steady pressure and efforts to construct dialogue with state officials. In Nuevo León and Coahuila in northern Mexico, international actors strengthened activists' positions, legitimating their reports of alarmingly high numbers of disappearances through their own independent reporting. More indirectly, international human rights NGOs (Amnesty International, Human Rights Watch), Washington-based human rights NGOs focused on policy in Mexico (Washington Office on Latin America, Latin American Working Group, the Center for International Policy), and several UN and US governmental

agencies (discussed in section C) all actively and consistently called for an end to impunity, calling attention specifically to extrajudicial killings in Colombia and homicides and disappearances in Mexico.

The Judicial Breakthrough Model that I presented in Chapter One presents four modifications to the boomerang model. These modifications specify the key site of judicial contention as the *judicial decision-making site*; highlight the importance of affecting the decisions of key judicial officials; differentiate local civil society actors into activists and advocates; and differentiate international actors according to their physical presence in the rights-offending country. These modifications to the boomerang model clarify what was under-specified in Keck and Sikkink's boomerang, and shift our attention from the *strength* of the international pressure to the *nature* of this pressure and its relationship to domestic social actors on the ground. They require that we take a fine-grained look at state-civil society relationships and take into account the physical proximity of the important decision-makers in thinking about what spurs institutional change in the crucial human rights arena of local and national judicial outcomes.

B. Institutional Reform: The Failures of the New Justice System in Chihuahua and Colombia

Both scholars and policymakers have long approached improving the provision of justice and strengthening the rule of law as problems to be dealt with inside of the judicial system itself. National and international policymakers focused on the rule of law in Latin America have most recently pinned their hopes for judicial improvement on the transition

to the oral, or adversarial, system of justice from the written, inquisitorial system. Mexico and Colombia both underwent this transition from written to oral systems of justice during the period of this study, and expectations are high for the success of these new judicial systems. Proponents of the adversarial justice systems in Mexico, for example, believe that the reforms will help “achieve a more democratic rule of law by introducing greater transparency, accountability, and due process to Mexico’s judicial sector” (Shirk, 2010). If, in fact, these reforms have been successful, they might help to explain some of the results in this dissertation. In Mexico, Chihuahua (the state with the highest rates of advocacy judicial success) was the first state to implement the full adversarial system in 2008, and is often held up as a model for the rest of the country (Ingram, 2013).¹⁷⁴ In Colombia, law 906 of 2004 establishing the oral system of justice was fully implemented in the entire country by 2010.

What has been the impact of these institutional re-designs on the provision of justice? Are cases proceeding more systematically and efficiently through the justice systems? While some initial reports have claimed that these programs have been successful,¹⁷⁵ overall, evaluating the effectiveness of the new justice systems has been difficult. A report commissioned by USAID, the lead implementation agency in Colombia, expressed uncertainty about the impact of the new judicial system because of “the absence of

¹⁷⁴ Nuevo León had only implemented the new justice system for less serious crimes during the course of this study, and Coahuila has yet to implement any part of this reform.

¹⁷⁵ Seelke, 2013 summarizes an internal 2012 USAID report, entitled “Monitoring the Implementation of the Criminal Justice Reform in Chihuahua, the State of Mexico, Morelos, Oaxaca, and Zacatecas, 2007-2011.” According to Seelke, the report claims that “prosecutors in Chihuahua, Oaxaca and Zacatecas proved twice as efficient at resolving criminal cases as in non-reform states (40% of cases resolved vs. 20%); Reform states have been able to significantly reduce the time it takes to resolve a case” (Seelke, 2013, 10).

adequate performance monitoring in almost all of the Colombian institutions surveyed, and the JRMP's¹⁷⁶ prioritization of deliverables over evaluations” (Guttmann and Hammergren, 2010, iv). Likewise, in Mexico, a similar evaluation found that “the quality of the data and information is poor. The data categories used by the National Institute for Statistics and Geography (INEGI) do not correspond with the new criminal justice system” (MSO, 2010). A goal of the new justice system had been to decrease the time between when a case is filed and closed, but the evaluators found that “there is no timely and reliable official data published on this issue” (ibid.)

The data I gathered on judicial outcomes of homicides in Chihuahua from 2006 – 2012¹⁷⁷ and Colombia from 2002-2010 allow me to compare how these cases fared under both the new and old systems. I find that contrary to reformers' hopes, the new justice systems appear to be performing worse than the previous written systems in the case of Mexico, while in Colombia, though the overall universe of cases fares better under the new system, cases of extrajudicial killings receive lower rates of justice under the new system.

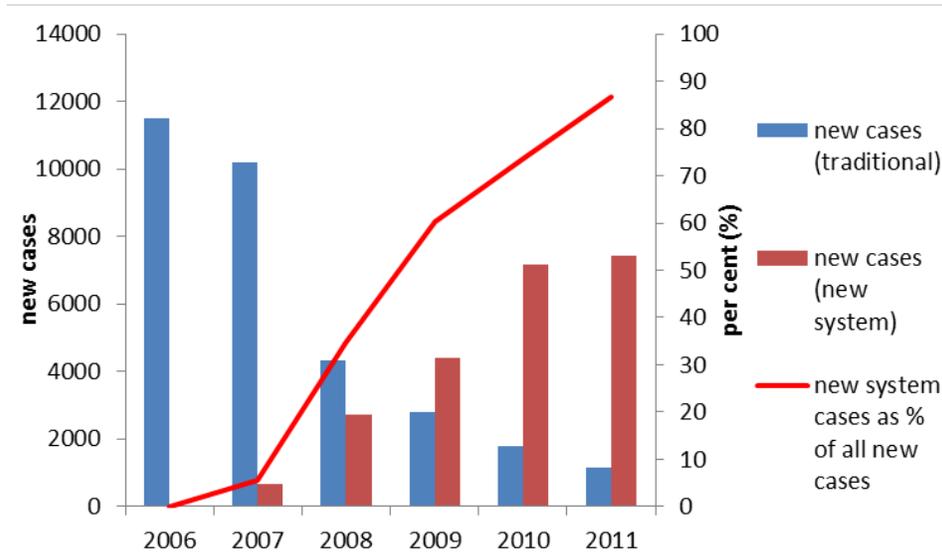
In Chihuahua, as in most states implementing the new system of justice, the implementation of the new justice system was done gradually. In practice, this means that murders and disappearances occurring between 2007 and 2011 could have entered either the old or the new justice system, with the overwhelming number of cases entering the

¹⁷⁶ JRMP stands for USAID/Colombia Justice Reform and Modernization Program. The program began in 1986, and since 2001 has worked consistently to support the passage and implementation of the oral system of justice.

¹⁷⁷ Though I gathered data on disappearances, the low number of both cases and advances in these cases prevent these cases from being informative.

new system by 2011. The graphic below illustrates the quantity of overall cases that entered the new and old justice systems between 2006 and 2011.

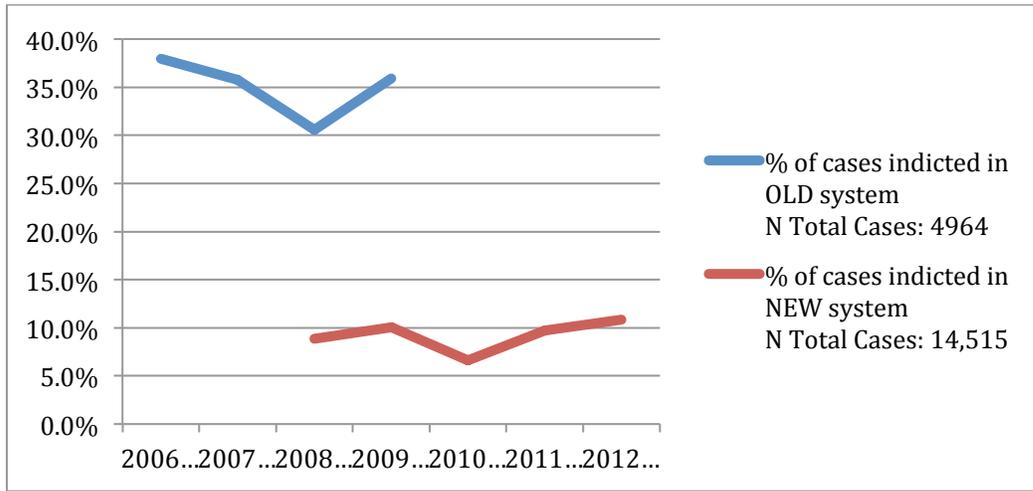
Figure 7.2 New System Cases in Chihuahua



Source: Ingram, 2013, p.16

In response to a 2013 information request filed with the state of Chihuahua, I received a report on the judicial status of homicide cases filed between 2006 and 2012. This report disaggregated judicial results under each system, and reveals that cases filed under the old, written system of justice had more than double the chance of indicting at least one perpetrator than cases filed under the new system.

**Figure 7.3 Homicide Indictments in Chihuahua Courts
Old vs. New System**



Source: Original Data Analysis based on Information requests. See Appendix A

While indictments do not capture the ultimate judicial fate of cases of homicide, all cases that proceed to trial and sentencing must first be indicted. In Chihuahua, this means that 90 percent of cases of homicides committed between 2008 and 2012 and filed in the new oral system of justice never proceed past the indictment phase, and are guaranteed to remain in impunity. Under the old, written system, an average of 35% of cases were indicted.¹⁷⁸ In short, the transition to an oral system of justice in Chihuahua appears to have increased rates of impunity in cases of homicides.

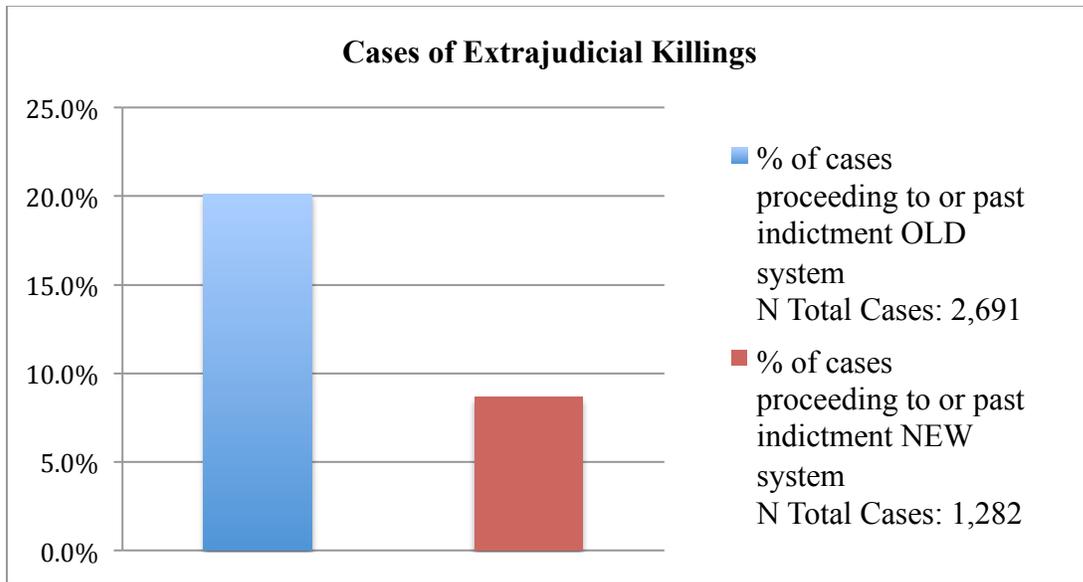
In Colombia, the broader universe of homicide cases have mixed judicial results.

Drawing from an aggregated data set of more than 200,000 cases, I find that while more

¹⁷⁸ Local groups attribute the failure of the reforms to play a constructive role to a series of “counter-reforms.” For example, under the new justice system the judge is supposed to have the authority to detain a supposed perpetrator instead of the police or investigating official, except in cases where the perpetrator is caught *in flagrante delicto*. The hope was that this would not alert the supposed perpetrator of the investigation against them, and permit the investigators time to build the case. Instead, civil society groups allege that “caught in the act” has come to be interpreted by police and investigators as “caught within hours or several days.” This has effectively cut the judge out of the detainment process, undermining the benefits to the investigative process that the new system intended.

cases proceeded past the initial investigation stage in the older system – more than 43 percent – only a little over one percent make it to trial. Under the new system, nearly four percent make it to trial. The results are different, however, in cases of extrajudicial killings, for which I have detailed case-level data. Of 2,691 cases tried under the old system, 54 percent have concrete judicial advances, and 8.4 percent – 226 cases - have yielded guilty verdicts. Under the oral system, the results are dramatically worse, with only 12 guilty sentences in 1,282 cases, and 8.7 percent of cases proceeding to or past indictment.

**Figure 7.4 Judicial Results of Extrajudicial Killings in Colombian Courts
Old vs. New System**



Source: Original Data Analysis based on Information requests. See Appendix A

The reasons for the dramatic under-performance of cases of extrajudicial killings in the new justice system are not immediately clear, and require further investigation. These data are sufficient, however, to reject the alternative hypothesis that the new system of justice is driving the positive judicial outcomes in cases of extrajudicial killings in Colombia.

In addition to the judicial transformation undertaken in Mexico and Colombia, there were numerous other legal and institutional changes in both countries that had the stated goal of improving the functioning of the justice systems during the period of study. Victims' laws have been passed in both countries, for example, but focus mainly on remuneration and mitigation of the economic effects of violent crime on the victims' families rather than judicial performance in those cases. Both countries have also spent significant resources on National Human Rights Institutions (NHRIs), which are tasked with investigating claims of human rights abuses perpetrated by state officials (Goodman and Pegram, 2011). Since these institutions have no binding judicial power, however, their most positive impact has been limited to strengthening the claims made by both activists and advocates.¹⁷⁹ In both countries, other laws have been important to facilitating the success of advocates. In particular, *coadyuvancia*, or the ability of citizens to be private prosecutors,¹⁸⁰ and the criminalization of enforced disappearance, were cited as important legal statutes that enabled advocate success. However, their passage does not correlate to the changes in judicial outcomes I found. Finally, there have been numerous state-level (as opposed to national-level) programs designed to strengthen the provision of justice during the period of study. Ciudad Juárez, for example, has been the target of intensive government efforts to end violence and improve the rule of law. Despite more than \$400 million of investments in the *Todos Somos Juárez* campaign since 2010, however, judicial progress in cases of disappearances and homicides has been minimal.

¹⁷⁹ In many cases, and especially in Mexico, the state-level NHRI has little independence and does not conduct serious investigations.

¹⁸⁰ See work by Veronica Michel on the importance of private prosecutions, particularly Michel, V., & Sikkink, K. (2013). Human Rights Prosecutions and the Participation Rights of Victims in Latin America. *Law & Society Review*, 47(4), 873-907.

In sum, these findings indicate that the transition to the new judicial system, the most important and costly institutional transformation undertaken in either country in more than a decade, has failed to improve the performance of the justice system in cases of homicides in Chihuahua, Mexico, and in cases of extrajudicial killings of Colombian civilians. This important institutional change in the justice systems in both Mexico and Colombia not only does not explain the improvement in justice provision explored in this dissertation – but it appears to worsen institutional performance. While other institutional changes have occurred during the period of this study, they also do not explain the changes in judicial performance.

C. US political pressure, foreign assistance and the rule of law

Colombia and Mexico are the United States’ two most important allies in Latin America, and have received the most foreign assistance and political attention of any countries in the region during the past decade. Two country-wide foreign assistance packages, Plan Colombia, launched in 2000 and allocated \$1.3 billion by President Clinton, and Plan Mérida in Mexico, begun in 2008 and budgeted at \$2.4 billion, land Mexico and Colombia amongst the top US Aid recipients in the world.¹⁸¹ While the aid packages to both countries have focused primarily on security outcomes, channeling money, weapons, military training, hardware and technology to the armed forces and police, strengthening the rule of law has also been a significant focus.¹⁸² Under Plan Mérida,

¹⁸¹ In 2010, Mexico received the ninth most US foreign assistance of any country in the world, with \$757 million, while Colombia received the 13th most with \$516 million. Source: ForeignAssistance.gov, accessed 12/3/2014. At the height of Plan Colombia, Colombia received the third highest dollar amount of US foreign assistance in the world.

¹⁸² The Government Accountability Office (GAO) defines rule of law programs as “assistance to help reform legal systems (criminal, civil, administrative, and commercial laws and regulations) as well as

which was largely modeled after Plan Colombia, the second pillar of the four-point aid package is “institutionalizing the rule of law.”¹⁸³ While exact figures are murky, funding for the rule of law portion of Plan Mérida “now dwarfs other types of U.S. assistance to Mexico” (Seelke, 2013). Has US political pressure and financial assistance resulted in improvements in the provision of justice and rule of law?

1. The Influence of US Political Pressure

US political pressure to improve judicial performance has largely been expressed within broader calls for improvements in human rights performance. US political pressure is made through ongoing communication by the US Embassies in both countries, as well as through the US consulates in Mexico. Additionally, the State Department issues annual human rights reports for nearly 200 countries, and special Congressional hearings may be held that focus on specific rights violations. Indirect pressure to improve human rights practice is exerted through several laws that condition US foreign assistance on human rights compliance. In Mexico, 15 percent of aid to military and police is frozen each year until the Mexican government can prove that “military personnel alleged to have committed human rights violations are investigated and prosecuted,” and that the federal government “is searching for victims of forced disappearances and is investigating and prosecuting those responsible.”¹⁸⁴ In Colombia, 25 percent of aid is frozen until the

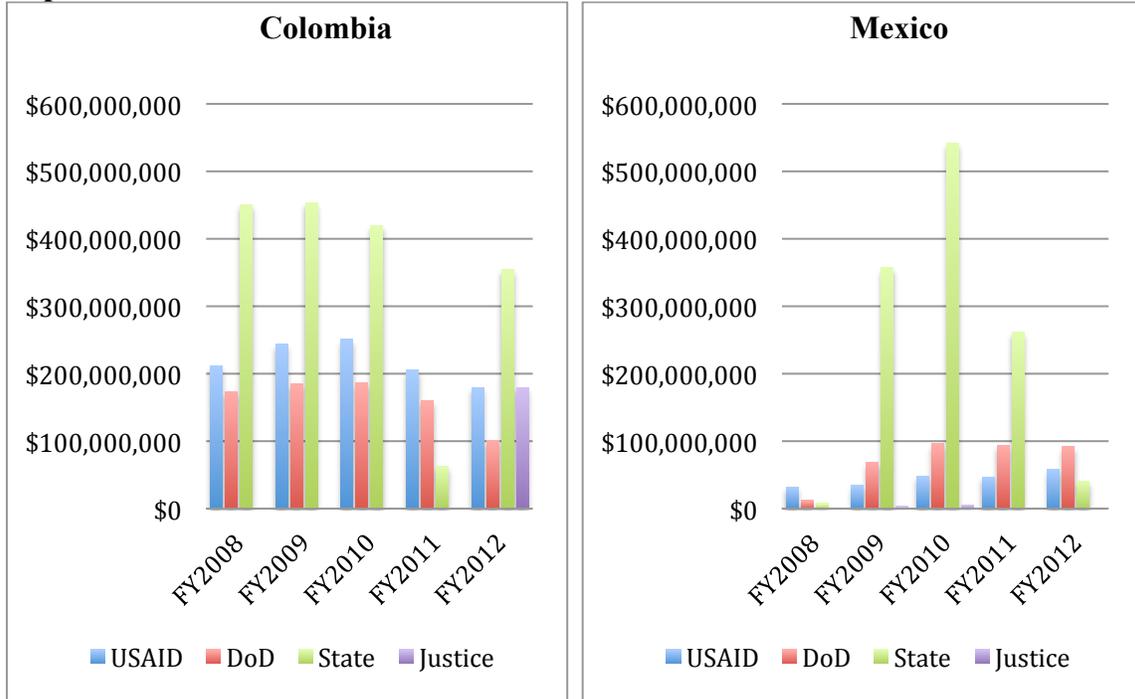
judicial and law enforcement institutions (ministries of justice, courts, and police, including their organizations, procedures, and personnel)” (GAO, 1999, 1).

¹⁸³ The other pillars of Plan Mérida are: “(1) disrupting organized criminal groups; (3) creating a 21st century border, and (4) building strong and resilient communities.” Clare Ribando Seelke and Kristin Finklea, April 8, 2014. “U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond.” Congressional Research Office.

¹⁸⁴ Ashley Davis (2014). “Latin America in the 2014 foreign aid law.”

Colombian government certifies that “cases involving members of the Colombian military who have been credibly alleged to have violated human rights are subject only to civilian jurisdiction, judicial proceedings in such cases are making substantial progress, and threats against witnesses are being investigated” (ibid.). In 2007, aid to Colombia was frozen in the wake of a scandal that revealed widespread paramilitary control of Colombia’s Congress, and in 2010, aid to Mexico was delayed until the government submitted a law to reform the military justice system. Finally, the Leahy law prohibits the Departments of State and Defense from giving financial assistance to any foreign military unit that contains members with outstanding human rights complaints against them. The vetting processes activated by the Leahy law, together with the Congressional human rights certification hearings, provide another important space for the US to push for human rights compliance.

Figure 7.5 Us Foreign Assistance to Colombia and Mexico, 2008-2012, by Department



Source: Original analysis of U.S. Agency for International Development (USAID) data, U.S. Overseas Loans and Grants: Obligations and Loan Authorizations, July 1, 1945–September 30, 2012. <https://eads.usaid.gov/gbk/data/index.cfm>

While I have already addressed the impacts of transnational advocacy networks in Mexico and Colombia, the unique financial and political relationships between each country and the United States merit closer examination. In Colombia, two changes in the US political context exerted contradictory pressure on the human rights performance of the Colombian government between 2009 and 2013 – the years in which we see the improvements in judicial outcomes. On the one hand, US influence in Colombia had decreased precisely at the time of Extrajudicial Executions (EJEs) scandal: the US significantly decreased the military aid to Colombia in 2007, effective in 2008. Not only did it cut overall aid by more than 10%, it reshuffled aid: between 2000 and 2007, about 80% of US aid had gone to Colombia’s military forces. In 2008, the House Appropriations Committee shifted this balance significantly – decreasing military

funding to 55% for military and police, and raising economic and social assistance to 45%.¹⁸⁵ On the other hand, however, Democrats' historic mid-term election victory in 2006 suddenly gave voice and power to critics of US policy in Colombia. The Colombian government, which had carefully cultivated a close relationship with George W. Bush, suddenly was forced to reach across the aisle and take Democratic-led human rights concerns a bit more seriously.

In Mexico, US political pressure remained focused at the federal level, and was not effectively translated into political pressure on the state political hierarchies, including the judicial systems, where the vast majority of homicide and disappearance investigations are conducted. The State Department put pressure on the Mexican federal government during the human rights certification process and subsequent withholding of \$26 million of US assistance in 2010 (Anaya, 2013). The Country Human Rights Reports issued by the US during this period focused on human rights violations attributed to the military during anti-drug operations, and “underlined that, in spite of the military’s formal human rights discourse, the investigations of cases of alleged violations of human rights conducted under the armed forces’ criminal justice system did not tend to result in convictions” (ibid., 4). The US Embassy and US policymakers remained connected principally to the traditional human rights gatekeeper organizations discussed in Chapter Three, and built only minimal relationships with state governments and nascent civil society movements focused on impunity in high-violence states.

¹⁸⁵ This section draws from several FOR Peace Presence Updates written by John Lindsay-Poland. “Taking into account the extra \$150 million that goes to Colombian military aid out of the Defense Budget appropriations, the proportions become: military/police 65%, economic/social 35%.” FOR Peace Presence update, June, 2007: <http://forusa.org/content/june-2007-peace-presence-update>; Accessed 2/17/14.

Given the importance of the US as a trading partner, political ally, and aid provider to Mexico and Colombia, it is important to take into account its political pressure and to assess the possibilities that this pressure may motivate strengthening the rule of law. While it is difficult to measure exactly how important this political pressure was during the period of study, I argue that this political pressure does not correlate with the variations in justice provision found in this dissertation.

2. The Impact of US Rule of Law Assistance

While US-sponsored rule of law programs are notoriously difficult to assess,¹⁸⁶ the top priority of rule of law promotion in both countries during the past decade has been the transition in judicial systems, and the US has spent hundreds of millions of dollars in both countries promoting this policy goal. As discussed above, the transitions in judicial systems in Mexico and Colombia have had neutral to negative impacts on the provision of justice in cases of homicides and disappearances. Beyond the judicial system transformations, are there changes in funding that would explain the variation in the provision of justice: has US aid targeted Chihuahua City but not Juárez? Nuevo León and not Coahuila? Was there a significant change in the nature and form of US aid provision in Colombia between 2009 and 2013 that led to improvements in the outcomes of extrajudicial killings cases specifically?

¹⁸⁶ The last government report attempting to track rule of law aid was issued in 1999, and cited 35 different governmental agencies - seven cabinet-level departments and 28 bureaus, agencies, and offices – as being involved in rule of law reform in 184 countries, including 40 in Latin America. See General Accounting Office, “Foreign Assistance: Rule of Law Funding Worldwide for Fiscal Years 1993– 98,” GAO/ NSIAD-99– 158 (Washington, D.C.: GAO, June 30, 1999), and Kleinfeld, Rachel (2012-10-05). *Advancing the Rule of Law Abroad: Next Generation Reform*. Brookings Institution Press.

In Mexico, US foreign assistance has not significantly and consistently targeted one state over another. Rather, most resources have been spent on training judicial official, police and military forces drawn from a cross-section of Mexican states.¹⁸⁷ Because of this, US foreign assistance cannot account for the sun-national variation in judicial outcomes documented in this study. In Colombia, in addition to the significant resources devoted to the transition from the written to an oral system of justice, USAID implemented a series of three five-year comprehensive Human Rights Programs. These programs targeted the National Human Rights Unit (NHRU) of the Attorney General for technical assistance and funding, and though program-specific funding information is not available, Colombians within the state bureaucracy frequently cite scarce resources as a major obstacle to improving judicial performance. Insofar as US assistance trained and, more importantly, funded the NHRU, this represents an important contribution to institutional strengthening. The NHRU handled 68 percent of the extrajudicial killings cases, significantly out-performed the state-based courts,¹⁸⁸ and was the key institution in producing systemic change in the way the Colombian justice system handles cases of

¹⁸⁷ In 2010, for example, USAID reported training 36 officials in alternative justice mechanisms in Chihuahua, 59 in Coahuila and 45 in Nuevo León (USAID/Mexico, Justice and Security Program Annual Report, 2010). By 2013, a total of 8,500 federal and 22,500 state justice sector personnel had received training on their roles in Mexico's new accusatorial justice system, and 19,000 law enforcement officers, including 4,000 federal police investigators, had completed U.S. training courses Congressional Research Service, (2014), p.8. "U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond." Prepared by Clare Ribando Seelke and Kristin Finklea.

¹⁸⁸ According to the "Memorandum of Justification Concerning Human Rights Conditions with Respect to Assistance for the Colombian Armed Forces," 28 July, 2008, US Department of State, p. 24: "The Human Rights Unit received an increased of 72 prosecutors raising its number from 45 in 2007 to 117 in 2008. The Unit will also increase its number of investigators by 110. The additional 72 prosecutors have been selected. Twenty have been assigned and are being trained, with the support of the U.S. government, in the investigation and prosecution of cases of extrajudicial killings... Increased training for the new, as well as existing, prosecutors and investigators, is taking place with assistance from the U.S. government..."

extrajudicial killings. Despite this investment, however, my analysis shows that without the intervention of the OHCHR, the NHRU would not have been able to gain access to evidence, nor did it have the political will to make judicial advances in cases of extrajudicial executions. The most positive interpretation of these facts is that US assistance was necessary but not sufficient for the NHRU's successes.

D. Selection Bias and Demographic Factors

Brinks (2008) finds that the most significant determinant of whether victims of police killings in Brazil, Argentina and Uruguay have positive judicial outcomes is their economic status. In short, justice works for the rich. Could economic status, other demographic factors, or case-specific factors be driving the judicial success I document? In Colombia, the litigation and advocacy strategy of the NGO coalition working on cases of extrajudicial executions did not require the participation, or even permission, of the family member of the victim, and they documented all cases of extrajudicial execution. This methodology makes selection bias unlikely, though the economic status of the victim could, foreseeably, be driving the judicial outcome.¹⁸⁹ In Mexico, however, NGOs use more varied case selection strategies, and all victim advocacy requires the participation of family members of victims. How could I be sure that selection bias and demographics are not behind the positive judicial outcomes in Mexico?

I attempted to answer this crucial question in three different ways. In order to be as certain as possible that the positive results of advocates were driven by their advocacy and not other factors, people that chose to go to NGOs if they or a loved one was the

¹⁸⁹ I do not have demographic information for the victims of extrajudicial killings or their family members in Colombia.

victim of a violent crime would need to be similar to people in the larger population. If people that went to NGOs were richer, more educated, or more likely to be women, these demographic factors could also be driving the judicial outcome of their case. I chose to address the question of who goes to NGOs through a randomized person-to-person survey conducted in rural, urban and mixed areas throughout Mexico.¹⁹⁰ The survey also randomized the interview respondents based on the level of violence in their state. I asked “If you were a victim of a crime in which your life was at risk, who would you notify? The respondents could rank three answers amongst seven possible responses: the police or the attorney general’s office; the church or religious community, an NGO or social leader in your community; a relative; a neighbor, a friend; or other. 111 of 1,000 respondents indicated that they would notify “an NGO or social leader in your community” first, second or third.¹⁹¹ Were these respondents different than the larger sample of respondents?

¹⁹⁰ The survey was administered by buendía&laredo, S.C., a statistical firm headquartered in Mexico. The survey employed a multistage area probability sample design, and was conducted between July 5th and 8th, 2012.

¹⁹¹ Roughly the same number – 110 respondents indicated that they would notify the church or religious community. While almost 80 percent, 787 respondents, indicated that they would go to the police at some point, only 38 percent indicated that they would to the police first.

Figure 7.6 Who chooses to notify NGOs/Social Leaders if their life is at risk?

	Average Age	% Women	Average Schooling <i>Where 2=Finishing Junior High, 3=Finish high school</i>	Monthly Household Income <i>In US Dollars</i>
<i>Demographics of those who would notify a Civil Society Organization or Community Leader</i>	40.14	51%	2.34 <i>Equivalent to finishing the 10th grade</i>	\$268
<i>Demographics of those who would NOT notify a Civil Society Organization or Community Leader</i>	40.78	52%	2.66 <i>Equivalent to finishing the 11th grade</i>	\$264

As shown above, it appears that those respondents choosing to notify NGOs or civil society leaders are nearly identical in their age, gender, schooling and income to those who chose not to.¹⁹²

Second, even if the people arriving to the NGO were similar to people who did not, if the NGO selects cases that are in any way inherently more likely to succeed in the courts, then perhaps these characteristics are driving the judicial success of cases rather than the advocacy activities of the organization. In order to control for this possibility, I only analyzed the advocacy efforts of organizations that accepted all cases of disappearances and homicide they received. Other civil society advocates, especially in Mexico, choose cases strategically – evaluating the quality of the evidence in the case, and taking the possible symbolic and legal impact of the case into account when choosing whether to

¹⁹² An OLS regression analysis was also conducted in order to understand whether any of the demographic characteristics was significantly correlated with any of the possible responses. No significant correlation was found.

advocate on behalf of a case. While these cases can establish important legal precedent and are most often the ones that make it into international courts and discourse, they don't help us understand how advocacy might affect an average case, nor do they help us explain why certain cases progress within the justice system (since it is impossible to tell whether the advocacy or the high quality of the case are what determine the judicial success).

Third and finally, even if those arriving at the NGO and the cases the NGO accepts are representative of the types of people and cases in the larger population, if victims' relatives are choosing whether to meaningfully participate in NGOs based on factors like income, this could also distort the impact of advocacy. All of the NGOs and social movements I studied in Mexico require that victims be active participants in the advocacy of their cases. Therefore, even if their cases are accepted by the NGO, their case only receives the benefits of advocacy if they are active and continuous participants in advocacy activities.

In order to understand who, of the victims that initially go to an NGO, ends up becoming an active member of the organization and therefore experiencing the benefits of advocacy, I worked with one Mexican NGO to construct a database of all cases of disappearances that they had received during a four year period. While more than 200 people had reported more than 1,000 cases of disappearances during this period, only 53 of these cases had been advocated for in meaningful and on-going ways by the victims' relatives. How were the victims' relatives that chose to engage in ongoing advocacy different from those that did not?

Figure 7.7 Demographics of NGO participants vs. Non-Participants

	Demographic Information of Family Member of Victim Reporting to the NGO					Demographic Information of Disappeared Person		
	Average Age	Average Monthly Income	% Women	Average Schooling <i>Where 2=Finishing Junior High, 3=Finish high school</i>	%age that do not work outside the home		Average Age of Victim at time of disappearance	Average Income of Victim at time of disappearance
NGO Participants	51	\$131	71%	2.59	54%		30	\$146
NGO Non - Participants	44	\$148	82%	2.61	45%		29	\$162

The demographics between the victims’ relatives in the two groups are quite similar.

Notably, NGO participants tend to be slightly older, and are more likely to work in the home than non-participants. This confirms participants’ observations that participating with the NGO is difficult if a person is employed, since many advocacy activities occur during the day, and are therefore more possible for retired people.

These three analytical exercises demonstrate that people who report cases to NGOs and ultimately participate in advocacy activities in Mexico are demographically similar to people who do not. This dissertation has argued that organized citizen action confers significant political resources to victims of violent crime. If Brinks’ findings that economic resources drive judicial success were true in the cases I have highlighted, we would expect that class, not advocacy, would explain advocates’ judicial success. Since we do not find such a relationship, we can tentatively reject Brinks’ theory as an alternative hypothesis. In order to definitely reject his findings, however, we would need

to compare the demographic information of victims and their families in the entire universe of cases of disappearances and homicides. This data is unfortunately not available from state sources.

III. The Supply Chain of Justice

In the remainder of this concluding chapter I will take a step back from the case studies I conducted in Mexico and Colombia and reflect on the practical and theoretical implications of this two-country study. I ground my reflection with a concept that I call the *supply chain of justice*. Most studies of law and justice consider the path towards a conviction as a linear, uni-dimensional process, much like the one I describe in my judicial scale in Appendix 1. The ideal path towards a positive judicial outcome is as follows: a crime is reported, a case is opened and investigated, an implicated party is indicted, the case goes to trial, and the implicated party is found guilty if the evidence is sufficient. This model implicitly assumes that the state is able, by itself, to gather the evidence needed to move a case from reporting to conviction, and that the physical location of different judicial actors shouldn't matter.

The findings in this dissertation suggest two fundamental modifications to this linear judicial path. First, my findings show that the involvement of civil society activists and advocates dramatically improves the outcomes of the judicial processes. Second, my findings highlight the importance of the physical location of judicial actors within the nation's judicial hierarchy: I show that the judicial decision-making site is the location of contention on which justice pivots. These findings underline the geographical unevenness

of judicial success,¹⁹³ and the possible influence of non-state actors on democratic quality.

They also suggest a more complex understanding of the ideal path towards a positive judicial outcome – one that incorporates non-state actor involvement and makes the physical location of all actors central. To operationalize this more complex judicial path, I introduce the concept of the supply chain of justice. This concept is both descriptive and idealized in that it is derived from the successful cases of state-civil society interaction I observed during my fieldwork, and in turn posits these relationships as an alternative to the linear, uni-dimensional judicial path described above.

I understand the concept of supply chains as linked series of actors, locations and processes, which increasingly traverse local, national and international spaces. Inputs, usually understood as raw materials, enter into this supply chain, and result eventually in the production of a consumer good. These supply chains can have just a couple links (think local farmers selling vegetables in local markets) or long, complex chains with many actors and multiple locations (think: a bottle of aspirin, with the plastic of the capsule from one country, the bottle itself from another, and the active ingredients produced in a lab in yet another locale).

I consider the production of justice, and ultimately the rule of law, as the desired outputs of a series of a similarly linked series of actors, locations and processes. Included in this

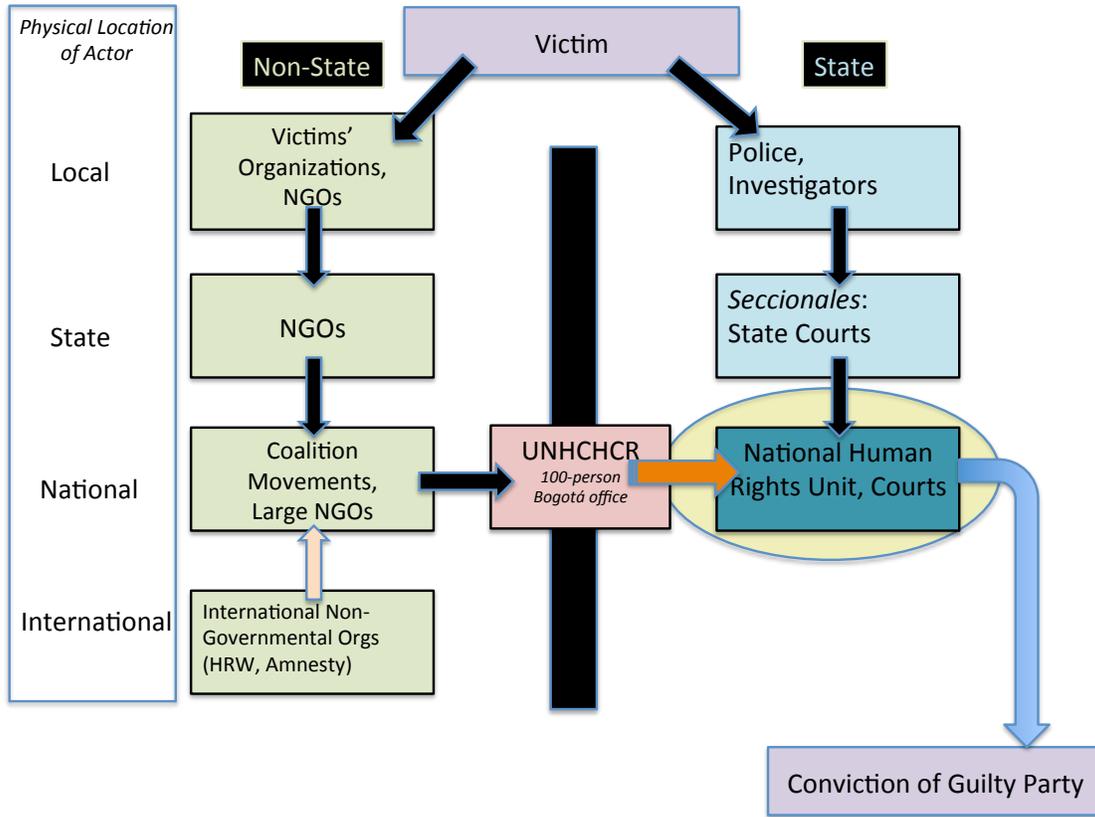
¹⁹³ O'Donnell's "brown areas" would be an extreme and paradigmatic example of this unevenness.

chain are state and non-state actors, local, national and international institutions and organizations. These different groups must facilitate the transfer of information around specific cases up the supply chain until the cases reach the physical location where decisions about the case are made – the judicial decision-making site. Actors further up the chain confer political legitimacy and support (and sometimes pressure) down the chain. In the case of non-state actors, this legitimacy is important in enabling the effectiveness of the advocacy group, and have the effect of adding value to the information being assembled by the advocate. The advocate then relays the case information to the state organization positioned to make the judicial decision. The connection the advocate makes between state and non-state actors is vital for the victim's case to progress through the milieu of state and non-state actors and result in the conviction of a guilty party. Absent from the model is an explicit representation of the political pressure exerted by activists, which could be thought of as emanating from all of the non-state actors towards every one of the state actors, with the combined effect of opening the political space necessary for the advocate to be effective.

As is the case with commodities, the supply chain of justice differs considerably in different contexts. In Colombia, as shown in Figure 7.2, case information must pass through the local, state and national levels before being effectively communicated to the state at the judicial decision-making site. I place the Office of the UN High Commissioner for Human Rights in between the state and non-state actors, and identify it as the advocate in this particular case. As I discuss extensively in Chapter Six, though UNHCHR is an intergovernmental organization that has its headquarters internationally,

it is an actor physically situated in the national political context, with over 100 fulltime staff in Colombia (the largest UNHCHR office in the world).

Figure 7.8 Supply Chain of Justice: Colombia



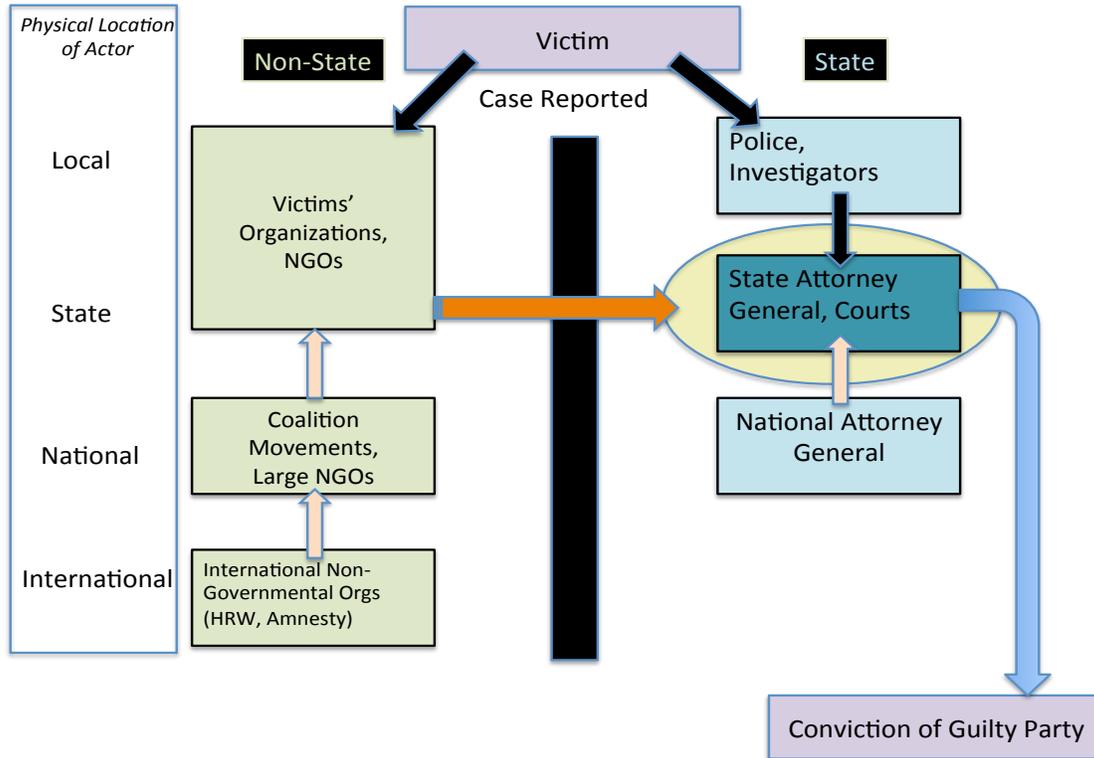
Key:

-  = Transfer of case-specific information
-  = Conferral of Political Legitimacy and Support
-  = Transfer of information across state/non-state divide by advocate
-  = Issuing of Judicial Result
-  = Judicial Decision-Making Site

In contrast in Mexico, a federal system in which the judicial decision-making site is located at the state level, rather than the national level, this information transfer within

the supply chain is much more limited, directly involving the transfer of information only between local and state actors. While the Mexican cases have to travel less distance between victim and prosecutor, this process must be negotiated in every state – whereas in Colombia, once an advocate breaks through to effectively transfer information to state actors, their intervention may affect cases which were reported and filed anywhere in the country.

Figure 7.9 Supply Chain of Justice: Mexico



Key:

-  = Transfer of case-specific information
-  = Conferral of Political Legitimacy and Support
-  = Transfer of information across state/non-state divide by advocate
-  = Issuing of Judicial Result
-  = Judicial Decision-Making Site

All actors in this supply chain of justice must be healthy enough to perform their basic function. If they do not have the capacity to perform their basic function, they will act as a roadblock, effectively stopping the production of justice. What contributes to the health and capacity of each actor in the supply chain? In commodity chains a factory must have an operational facility, sufficient cash flow, and viable contracts with its laborers and vendors. Likewise, both state and non-state actors at every level must have the basics covered: they must have a physical location from which to operate, and competent personnel who are paid to work under labor conditions that allow them to do their jobs. On the state side, they also must have the legal infrastructure to effectively perform their function. To facilitate “justice” in cases of enforced disappearances, for example, the crime of “enforced disappearance” needs to be on the books, which it is not in many Mexican states.

Most scholarly efforts to understand the provision of justice and the rule of law have focused at the top of the supply chain, and on only one side (state or non-state) at a time. We have excellent literatures on supreme courts, and on the key international non-governmental players in transnational advocacy networks. In Mexico and Colombia, there is an emerging consensus that supreme courts have played a progressive role, in effect building the necessary legal infrastructure to permit domestic courts to protect human rights. There has been much less attention paid, however, to the lower level actors in the supply chain, particularly to the interaction between lower-level non-state and state actors, and to the mechanisms and processes that connect actors situated at different levels of the judicial supply chain. My work suggests that if we are interested in the

provision of justice and rule of law as an output of the justice system, we must conceptualize the provision of justice as a result produced by the entire linked chain of state and civil society actors that span local to international spaces, and we must think about what each actor in this chain needs in order to perform their basic function and interact productively with the next actor in the supply chain. Crucially, we must think about the link between state and non-state actors. I posit that this link must be made by actors anchored to the judicial decision-making site – the physical location where the key decisions about the judicial progress of a case are made – by advocates, actors that are trusted by state and non-state actors. In Mexico, this site is in the state capital. In Colombia, it is at the national level.

In the next section I share preliminary impressions about how to nurture these supply chains, and specifically factors to consider when promoting the health and viability of organizations on the bottom of the supply chain on the non-state side – that is, local victims' and non-governmental organizations. In the entire supply chain, these are often the most threatened and under-resourced organizations, yet they are foundationally important: if there is no local non-state organization for a victim to turn to, victims of crime are much less likely to report a crime – the single largest factor in producing impunity, and if they do report their case but don't link to a local organization, they have more than an 80% chance of never having their case investigated in both countries. In other words, without local organizations, victims of violent crime are almost guaranteed to remain outside of the judicial supply chain. Because of this, I concentrate on the how to nurture the local civil society organizations that have been the focus of this

dissertation. I discuss the divisions and sometimes vicious in-fighting amongst local groups, and reflect on what this means for the possibility and capacity of local groups to play their foundational role in the supply chain, and ultimately to positively contribute to judicial processes and rule of law strengthening efforts. Next, I discuss how financial support and institutional changes support, or undermine, these groups. I highlight the contingent effect of these interventions, and argue for the importance of paying attention to local configurations of power and relationships. I move next to considerations of the state side of the supply chain, and argue for the need for more research into the mechanisms that persuade state judicial actors, especially lower level actors, to partner with civil society. In the final section of this chapter, I return to a discussion of why the phenomenon of citizen involvement in judicial processes has effects beyond the provision of justice, and plays an important role in strengthening the rule of law. I conclude by reflecting on the implications of a more participatory, bottom-up understanding of judicial activation and rule of law efforts means for democratic quality.

IV. Promoting Local Civil Society Participation in Judicial Investigations

A. Acrimony and its Implications : “Victims” as Agents of Change

In May, 2013, an article entitled “The Mental Disequilibrium of a Mother,” was published in an online newsletter.¹⁹⁴ The article accuses Norma Ledezma - the founder and head of the organization whose remarkably successful work advocating for justice in Mexico I highlight in Chapter Four - of lying, protecting delinquents and harassing and threatening other activists. The article concludes with these paragraphs:

¹⁹⁴ Original Translation. Last accessed 7/11/14: <http://www.losangelespress.org/feminicidios-los-desequilibrios-de-una-madre/>

There may be people who would question whether exposing a mentally unbalanced mother of a victim of femicide is morally correct. To them we must respond that...if the mother has undergone such dramatic tragedy, what is she doing in a government office? Clearly [this] is not the most rational strategy to address gender crimes. It is clear that these crimes are committed with the complicity of the state.

It is impossible for a person with the tragic experience of femicide, as the mothers of Juarez and Norma Ledezma have, to be fully sane and at the same time to decide to lead projects and conduct criminal investigations....But having the audacity to profit from femicide, especially in the case of her own daughter, indicates not only emotional, but moral imbalance.

I have just made the case for the importance of local groups in the supply chain of justice. These same organizations, however, also tend to fight with each other, often bitterly. As exemplified in the quotation above, differences in beliefs about the nature of the state often turn personal and vitriolic in contexts in which people perceive that lives, money and justice are on the line. We see this replicating itself in different national contexts: in Argentina, the *Madres de la Plaza de Mayo* split into two groups, and now there are two groups that march simultaneously, back to back, without acknowledging each other. In Colombia, the civil society group that mounted more protests than any other during the Uribe administration, the *Madres de la Candelaria*, an organization founded in the image of the Argentine *Madres*, also split acrimoniously. They now set up their banners on the same church steps every Wednesday at noon but don't speak to each other, and sometimes they configure the banners with pictures of their lost loved ones perpendicularly to each other to visually communicate the divide within the group. In Monterrey, Mexico, several family members of victims who felt Sister Consuelo had mistreated them founded FUUNDENL, which allied itself with the more radical FUUNDEC in neighboring Coahuila. Are these just highly visible cases of normal

infighting that takes place within social movements and civil society organizations? And what does this mean for the capacity of these organizations to effectively and consistently partner with investigators and state judicial officials in the pursuit of stronger provision of justice and rule of law?

The majority of the local groups profiled in this dissertation are made up of parents who have children who have been disappeared or murdered.¹⁹⁵ Most family members of victims had begun their journey towards participating in local activist or advocate groups by going, by themselves, to local police stations and investigators' offices to look for their family members. When they didn't get anywhere by themselves, and oftentimes happened to see a victim advocate in the news, they realized that they may have greater success if they collaborated with other people in a similar situation. The act of joining the collective, therefore, was usually driven by a desire for increased personal efficacy, rather than primarily by a sense of solidarity with other victims of violence.

Once involved in this collective group, however, the decision this collective makes are usually high stakes for the individual participants. In considering whether to participate in a confrontational action calling the governor to task for a lack of progress in the cases in one Mexican state, for example, I heard some family members express worry about antagonizing the boss of the investigators they were meeting with about their case: if they angered these people, the investigation into the disappearance of their son or daughter might be derailed. On the other side, frustrated family members saw that without

¹⁹⁵ Most of the groups profiled here have recognized the need for psychological and social support for their members, and there are nascent but well-developed frameworks for "psycho-social support" (See Beristain, 2011).

increasing the pressure on the authorities, investigators might not be motivated to make progress in their stalled cases. Either way – the lives of their sons and daughters were seen to be on the line with every strategic decision the collective made. While a strong sense of solidarity can knit a group together, the high stakes nature of group decision for the family members of victims of violence leads, almost inevitably, to schisms within groups over issues of strategy, resources and priorities. This is why the condition of “advocates only” is temporary in my typology: as advocates negotiate with state actors, there will always be some cases which do not make judicial progress, and therefore there will always be frustrated family members of victims. These frustrated victims’ relatives often decide to break off from the advocate group to engage in more confrontational tactics, since the relationship building has not led to their case advancing.¹⁹⁶

This is important for organizers and lawmakers to keep in mind as they form relationships with these local groups: judicial progress is not only a result of these processes, but it is also a constitutive part of forming ongoing relationships with these groups. Without judicial advances in at least some cases, these partnerships will not last. Good faith between these parties is cemented when these collaborations produce judicial results. The positive developments affirm the risks that both groups are taking in order to work together. For state judicial actors, it validates their decision to challenge the narrative that family members of victims are somehow criminals by virtue of being related to someone who has been the victim of a crime, and hence cannot be trusted or

¹⁹⁶ This is not to say some victim participation is not driven by altruism or solidarity; it certainly is, especially in cases in which, long after the solving of a case, a family member of a victim remains active in the organization.

productively engaged with. For family members of victims, it validates their collaboration with state officials, something usually seen as dangerous or, at best, naïve.

B. Policy Implications: Supporting local non-state organizations

Strengthening the provision of justice and rule of law is a central objective for many governments (particularly the US government), and non-governmental foundations and initiatives. How might these organizations productively intervene in the judicial supply chain? The further down the supply chain of justice we go, the less funding and resources there tend to be, with the local non-governmental organizations the most under-resourced of any group in the supply chain. How might these local organizations be supported?

The most common form of support for these local non-state actors is financial assistance. To begin the discussion of the impact of financial support on local non-state organizations, let's return to the case of Norma Ledezma introduced above: Ledezma has been able to pay rent for a modest office in downtown Chihuahua City and pay a staff of about five people to support the advocacy work of her organization, *Justicia Para Nuestras Hijas*. *Justicia* has received modest grants from several small foundations, including the Global Fund for Women and the Angelica Foundation, as well as from the larger Avon Foundation. They have also received a small grant from the US Embassy in Mexico. Given their success, should international donors double or triple *Justicia's* budget? Should they fund Norma herself to replicate the project in other states? In other words, what are the normative and policy implications of these findings for local groups? While I don't have the answers to these important questions, the following insights were gleaned from conversations with both donors and numerous local organizations:

- *Being an effective advocate or activist requires resources:* The basic activities engaged in by local activists and advocates require financial resources. These include: hiring and retaining competent staff; maintaining a physical location that is safe and conducive to work getting done (has internet, a/c in hot places); having a meeting place for family members of victims; providing food for people coming to long meetings from far away; being able to provide transportation to go to and from different government meetings; and publishing reports about the cases they are advocating for and/or critiques of the local manifestations of impunity.
- *Applying to and administering grants requires professionalization and organizational resources:* Most local activist and advocacy organizations are run on small budgets with small staffs – and so lengthy, demanding grant reports are being written by activists and advocates at home and at night. Most grants do not fund these services – they are seen as incidental, when in fact there is a direct opportunity cost: grant applications and reports are being written during time which would otherwise be spent on advocacy and activist activities.
- *Organizations that are effective advocates may not document their activities well.* None of the organizations that I identify as being especially effective advocates had clearly documented their work and judicial successes. Most of them develop their strategy of working with state officials intuitively and iteratively. When they see that a certain official produces results, they continue to work with him (or

- her). They are by definition flexible and adaptable organizations, doing whatever they can with the resources they have. These very qualities that make them effective advocates do not lead them to be very good grant recipient candidates: as their activities are shifting depending on the local context, what they promised they would do during a foundation's last grant cycle becomes outdated.
- *Money affects the dynamics between organizations:* as shown in the tirade against Ledezma above, in which she is accused of “having the audacity to profit from femicide,” organizations operating in the same political context know when money comes in. Though accusations of corruption and “selling out” can be mitigated by transparent accounting practices and documentation of the outcomes produced, there is a limit to these mitigation efforts – and an organization receiving an influx of capital from outside the judicial decision-making site will nearly always be accused of benefiting financially from victims.
 - *Money incentivizes local organizations to assume the priorities of funders:* Foundations, embassies and other funding organizations most often enter into contexts with their funding priorities already defined. Often, a lengthy visioning process conducted with the person or corporation who provides the money to the organization has determined these priorities. Though funders often pay lip service to understanding the local context and respecting the decisions of the local organizations, these pre-determined priorities most often structurally prohibit them from allowing local organizations to frame and carry out their work in the

most effective way that they see fit. I saw an exception to this pattern in the grant-making of the Global Fund for Democracy, GFD, which funded all of the northern Mexican organizations I profiled. They took an implicitly ethnographic approach to grant making. Grant officers participated in the mobilization and educational activities of the various organizations, established long-term relationships with their fundees, and made longer and more regular visits to these small organizations. By speaking with and observing different staff members working through their day-to-day challenges and successes, they gained a much more complete picture of the organizations' inner-workings without the tedious and resource-intensive grant reports that most funders required.

In sum, building the capacity of local non-state organizations is a crucial and fraught part of creating a healthy and functioning supply chain of justice. While financial resources are undoubtedly necessary for their vitality, money nearly always causes internal distortions, and can aggravate the existing and nearly unavoidable conflicts with other local activist and advocate groups. Grant-makers that take the time to understand the local political contexts and explicitly make space for the priorities and practices of their grantees increase the chance that their financial resources will indeed strengthen local non-state actors.

C. Murky Mechanisms: What makes judicial officials start trusting non-state actors?

What persuades judicial actors to change their behavior? Why would a judicial actor start

forming a trusting relationship with a member of civil society when they hadn't before? I center this dissertation on judicial systems producing different results because of civil society intervention and changing, and improving, the way they investigate the most serious crimes. When I interviewed state judicial officials, in most cases, perhaps surprisingly, I talked to investigators who had been around a while. While new bosses sometimes brought in new people, the majority of police and low-level investigators I talked to were lifelong bureaucrats. Why, then, would they change the way they operated? What makes authorities willing to form relationships with non-state actors?

Coming into this study with the boomerang model in mind, I expected that political pressure would map onto judicial decisions: more pressure from more powerful actors, especially those positioned inside the state bureaucracy, would yield more behavioral change. Recent scholarship, however, points to the incompleteness of this vision, and emphasizes the ideational and cultural determinants of judicial rulings. O'Cantos (2014), studying supreme court judges in Peru and El Salvador, finds that NGOs are key to vernacularizing (Merry, 2006) international human rights norms, and that explicit strategizing from national-level NGOs can "train and re-socialize judges and prosecutors in a new legal culture, thus emboldening them to overcome severe anti-transitional justice pressures from the military and the political class and technically enabling them to punish dozens of civilian and military leaders for the crimes perpetrated in the war against the Shining Path" (496). He ascribes causal importance to legal knowledge and established routine practices, and argues "that judges must not only be persuaded about the intellectual and normative merits of the new doctrines, but decision-making routines must

be deinstitutionalized by teaching judges how to translate unfamiliar meta-legal norms into jurisprudence” (ibid).

O’Cantos’ study, while asking the question that comes closest to the one posed in this section, focuses only on supreme court justices. We might expect these high-level, educated elites to make decisions and respond to incentives differently than the low-level bureaucrats responsible for carrying out the preliminary investigations. How might we think about their incentives and output? I found in interviews with state investigators that the political cost to impunity was indeed a motivating factor. Activists are an important part of changing the political context in which judicial officials make decisions, and in producing a cost to impunity. But investigators expressed to me that these political incentives were not enough to change their actions . Investigators run great personal risks by deciding to investigate a case, especially when the accused are members of the state or organized crime. A rational calculation of political expediency is rarely going to persuade an investigator to risk theirs or their family’s life to pursue justice in a case.

The tipping point for many of the investigators I met with or heard about was a change in beliefs. While relationships were important, changes were not made because the investigator developed a connection with the family members of the victims and became persuaded that they wanted to solve the case. Rather, investigators changed their vision of the facts of the case through their discussions with the victims or the United Nations. In Colombia, I found that when judicial investigators realized that it was in fact true that the army had been killing innocent civilians for personal gain, this was a personal affront to

the way these judicial officials understand their own identity and the nature of the state. This contradiction, if not prosecuted, would change the way the investigator thought of themselves: in short, if they worked for a state that killed innocents and did nothing about it, they were complicit in this reprehensible act. Before they had plausible deniability that the facts were true – when they got close to the case, the facts were undeniable and disturbing. These experiences leave the question unresolved of why these investigators started listening to the victims in any way in the first place. In this area, however, I do not have enough evidence to draw conclusions, and additional work, preferably ethnographic in nature, will need to be done to understand what motivates these investigators to form relationships with victims of violence.

V. Beyond the Provision of Justice, Towards a Stronger Rule of Law

In the first opening chapter I made the case for employing the concept “rule of law” instead of the narrower concept of “provision of justice.” In the operationalization of my dependent variable throughout this dissertation, however, I have used a five-point judicial scale, which I claim gives us a more nuanced picture of justice provision than normally found in policy documents or scholarly literature. If my most systematic evidence concerns provision of justice, why insist on making the claim that organized citizen action strengthens the rule of law? Strengthening the rule of law goes beyond merely punishing those responsible for committing crimes. The defining characteristic of rule of law under a thin definition is applying the laws on the books. Under a thick definition, however, rule of law entails fulfilling the spirit of the law. In the Mexican and Colombian contexts, I argue that organized citizen action facilitates the fulfillment of the spirit of

rule of law in three ways, all of which are designed to nurture the health of the supply chain of justice. First, I find that organized citizen action leads to greater transparency in judicial decision-making. In so doing, it deters two common related and illegal practices: using torture to extract confessions, and framing of innocent people for committing crimes. Second, I argue that organized citizen action, specifically the trust-building engaged in by advocates between the state and its citizens, addresses the greatest source of injustice in both countries: the non-reporting of crimes. Finally, I discuss the importance of civil society networks in improving the prevention of homicides and enforced disappearances through rapid reaction mechanisms.

A. Civil Society and Transparency: Shining Light on Torture and Framing

As discussed in Chapter Three, torture is a rampant police “investigation” tactic in Mexico. It is common knowledge that police use torture to extract confessions, and that these confessions are virtually always ruled as admissible by the courts. While both domestic and international civil society actors have systematically denounced the practice, there have yet to be any state-led initiative that effectively deter this practice. While organized citizen action is certainly not a remedy for torture, it does open the black box of judicial processes that is normally opaque. Those who have studied torture in Mexico find that torture perpetrated by police and state investigators has the goal of extracting a confession which will lead to the conviction of the accused and the “clearing” of the case from the judiciary’s files. If we accept these findings, we can see how participatory investigatory practices of the character I have described in Chihuahua and Nuevo León might deter torture: when the details of a case are being reviewed by the

family member of the victim, the NGO or civil association's lawyers, along with many different levels of state investigators, it becomes more difficult to implicate a person who has nothing to do with the crime, but somehow has confessed. Simply put, organized citizen action shines light on the details of cases that usually remain in darkness, making it harder for the false confessions obtained through torture to maintain credibility.¹⁹⁷

While torture is one method used to implicate innocent people in crimes they did not commit, there are many other methods used to frame people for crimes in both Mexico and Colombia. As illustrated in the 2010 Mexican documentary "Presumed Guilty," *Presunto Culpable*, there is often some incentive to "clear" a case to present the image that police are effectively dealing with crime and that the justice system does indeed work. There is little incentive, however, to investigate and find the perpetrator of the crime. This imbalance in incentives leads to the framing of innocent people: in the case documented in *Presunto Culpable*, a street vendor who did not know the murder victim and who had several witnesses place him miles away from the scene of the crime at the time it was committed, was tried and convicted for a murder.

In Colombia, while there may be cases similar to the one documented above, a more prevalent form of framing people for crimes they didn't commit is referred to as "judicialization." It commonly refers to the state launching multiple fabricated

¹⁹⁷ Victim-led calls for justice do, however, sometimes clash with human rights organizations' commitment to end torture. As mentioned in Chapter Three, in the case of Villas de Salvárcar, one of the young men arrested for perpetrating the massacre, named Israel Arzate, was later defended by ProDH, Mexico's most important human rights organization. Arzate credibly claimed that his confession had been obtained through torture. ProDH took on his case, angering many of the families from Salvárcar, who believed the young man was involved in the massacre (Interviews with members of ProDH, and meeting with family members of those killed at Villas de Salvárcar).

investigations into the financial and personal practices of political leaders.¹⁹⁸ In both countries, as members of the state's investigatory bureaucracy begin to collaborate with family members of victims of violent crime or other advocates, I find that they are less likely to resort to false accusations. I heard family members of victims and their advocates speculate in great detail as to who may be involved in the disappearance or murder of their loved ones. Surprisingly, given the history of both investigatory systems, they rarely told me that the authorities had the wrong perpetrator. Much more common was that they thought the authorities were dragging their feet investigating and arresting who they believed to be responsible. While this observation is not proof that false framing does not continue to occur in cases in which members of civil society are actively involved, it makes it more difficult for confessions of people who are unrelated to the case and could not plausibly be involved to be taken seriously.

These soft, citizen-led accountability mechanisms are especially important in the context of an increased emphasis on judicial performance, and specifically on obtaining convictions in cases of serious human rights abuses and violent crimes. If, faced with the urgency of ending impunity and dissuading violence, convictions are incentivized without credible accountability mechanisms, we risk *incentivizing* torture and false convictions, rather than deterring them. As we saw in the false positives scandal in Colombia, institutional incentives in systems with weak rules and norms can lead to disastrous consequences and gross human rights violations. Seen this way, civil society

¹⁹⁸ Peace Brigades International, an international NGO which provides physical and political accompaniment to civil society leaders, has an entire section on their website documenting the “judicialization” launched by the state against civil society leaders: <http://pbicolombia.com/category/judicializacion/>. Accessed 9/25/2014

involvement in judicial processes is a crucial step in improving judicial performance. While I would not categorically discount efforts to improve internal accountability measures, the fact that these nefarious practices are rampant demonstrates the difficulty of the state regulating itself when it comes to the provision of justice.

B. More reports, more justice:

Civil society & the willingness of citizens to report crimes

Most citizens in Latin America think that their justice systems do not work very well.¹⁹⁹ Largely as a result of this perception, most crimes – an estimated 83% in Mexico, for example – go unreported.²⁰⁰ In other words, by far the largest source of impunity is that, by conservative estimates, 50 percent of crimes are not reported, and therefore have no shot at justice within the state’s institutions. This problem is illustrated below. Between 1997 and 2010, we can see that the number of reported crimes in Mexico per 100,000 people essentially remains constant. This in spite of the explosion in crime after 2007, as illustrated in Figure 7.4.

¹⁹⁹ The AmericasBarometer by the Latin American Public Opinion Project (LAPOP), www.LapopSurveys.org, for example, found in its 2010 survey that 89% of Mexican and 79% of Colombian respondents expected that the guilty party would be punished in the case of a robbery not at all, a little bit, or only partially.

²⁰⁰ CIDAD, 2011: http://cidac.org/esp/uploads/1/Red_Numbers.pdf

Figure 7.10 Total reported crimes per 100,000 inhabitants 1997-2010

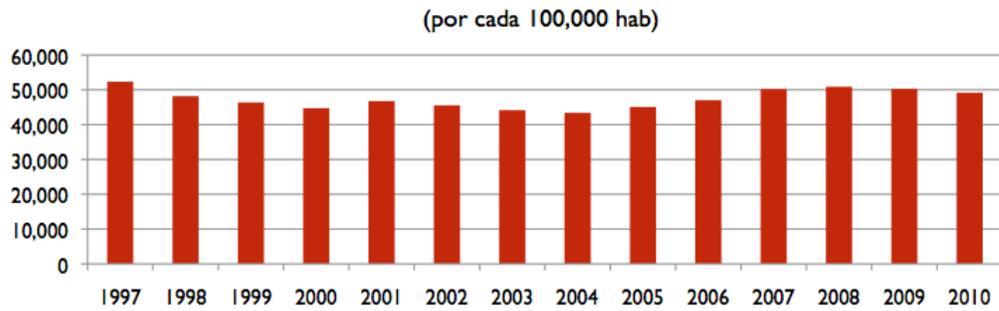


Figure 7.11 Total murders per year, 2007-2010



Source: CIDAC with data from Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública; CONAPO and Censo de Población y Vivienda 2010.

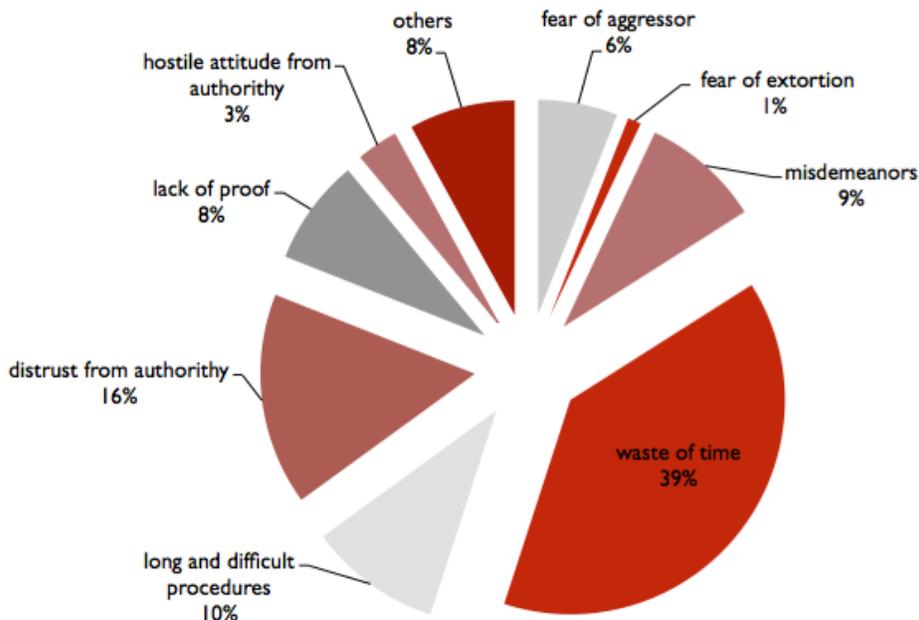
These figures may reflect two related trends: first, they suggest that even as violence increased, the Mexican justice system was not capable of documenting more cases. This could be attributable to the lack of willingness and/or capacity of officials. I heard many stories of family members of victims visiting the office of the local judicial officials several times because when they first went to report the crime, there was no one available

to receive their complaint. In Colombia, I found this also to be true. In October 2011, for example, the entire Office of the Attorney General was on strike for several months. That is, there was no way to report any type of crime in the entire country of Colombia for a period of several months. Second, these figures may represent the unwillingness of victims of violent crime to report crimes.

This dissertation largely ignores these unreported cases – my dependent variable is judicial progress in *reported* cases, and a requirement for most of the civil society organizations I discuss is that the family members have reported the crime. Unreported cases do appear at times in this dissertation: many of the family members of victims took the stage at Movement for Peace rallies. In my data from Colombia, there are more than 2,400 cases that the NGO coalition has documented, but which have been assigned no case number and for which there is no judicial stage listed – meaning they have not been reported to authorities, but were either reported in the press, or reported to an NGO affiliated with the larger coalition.

The unknowable real statistics around crime and violence, referred to as the *cifra negra*, in Mexico, is something openly discussed in the press and amongst members of civil society. In order to study this phenomenon, a report by a leading policy think tank conducted a survey about citizen views of the justice system, and asked citizens why they do not report crimes. A full 16 percent stated that they “distrust authority,” while a plurality of respondents, 39 percent, say that it is a waste of time to report a crime. An additional three percent cite a hostile attitude from authorities.

Figure 7.12 Reasons Why Crimes are Not Reported in Mexico



Source: 2011, CIDAC with data from the ENSI-6, ICESI; See http://cidac.org/esp/uploads/1/Red_Numbers.pdf

These figures suggest that efforts to build trust with authorities, decrease hostility between state officials and citizens, and more than anything, to produce judicial results that challenge the perception that reporting is a “waste of time” are key to getting leverage on the arguably biggest problem facing justice systems in both countries: citizens have given up hope that the justice systems can ever work, and are opting out.

C. Rapid Reaction Response

While I will not belabor this point because I did illustrate this especially in the Mexico chapter, it bears repeating that these state-civil society relationships and connections not only affect the investigative processes of these cases, but I also observed them being

activated by advocates in order to immediately respond to cases of disappearances. One particular case stays with me: a boy was taken from his home in a rural part of Chihuahua state. There was only one road that came in and out of the town, and the boy's mother jumped in her car and followed the truck with her son in it, and then went to the police station to report what had happened. She told the police that if they radioed their patrolmen along the road, that they would surely catch the truck. She reported the license plate number, make, color and model of the vehicle. The police proceeded to stall, letting the truck escape, and her son was never seen again. Contrast this to the cases I discussed in Monterrey, with Sister Consuelo immediately contacting the State Attorney General, who was able, in a matter of minutes, to talk to his patrolmen on the ground and direct them to give information as to the whereabouts of a boy who had been picked up by the police, and the importance of these types of relationships become clear. Most often, cases of disappearances that are immediately solved do not appear in any official data. In thinking about fulfilling the spirit of the law, however, these rapid reactions that activate usually slow and bureaucratic investigatory systems are an important step towards decreasing crime and protecting citizens' basic right.

VI. Conclusion: Towards a paradigm of Participatory Justice

Activists and advocates in both Mexico and Colombia have been inspired to organize and act by the deficiencies in their national justice systems. In the face of high levels of violence and impunity, these groups have emerged out of necessity. Does this imply, then, that under ideal conditions, these groups would not exist? That the linear, supposedly uni-dimensional conception of justice provision undertaken by independent,

efficient, Weberian state bureaucracies would and should be the ideal? That what I call the supply chain of justice is only a sub-optimal adaptation to weak and dysfunctional judicial bureaucracies overwhelmed by violence and systemic problems?

Emerging literature on democratic quality would imply the opposite: that democratic quality is enriched as new channels of institutional participation are opened. As a comparative study on the benefits of participatory budgeting found, bringing civil society into processes that were once completely controlled by the state

facilitates the mobilization of underrepresented groups who, despite enjoying formal rights of citizenship, cannot process their claims through institutionalized channels. New collective actors emerge that can thus help break through the self-reinforcing equilibrium of representative democracy in which those who have privilege can use politics to reinforce that privilege...Once we dispense with the surprisingly obstinate fallacy that in liberal theory that politics are individual and that political action is a response to the individual [rational choice]...then we have to recognize the fundamentally social character of political life. In this sense, civil society is critical to how actors come to collectively understand, process and coordinate their needs, interests, preferences, and identities. In its normative ideal, democracy can then be conceived as a set of practices that links civil society to public authority” (Baiocchi, Heller, and Silva, 2011,142).

Judicial processes have long been thought immune from civil society and social movement participation. Borne out of necessity, however, my research located moments of participatory justice in which both state actors and advocates were negotiating not only the judicial results of particular cases, but the rightful place of citizens within one of the state’s least penetrable institutions. In the process, both sides were reevaluating their needs, interests, preferences and identities. State investigators began to see the need to talk to the family members of victims; family members of victims formerly excluded from dialogue with state actors began to see themselves as agents worthy of rights and

justice. While demands for justice often went unanswered, nearly every victim relative in Mexico told me that joining the collective group had transformed the way they were treated by the state – and that for the first time they felt respected. The struggle for justice and democracy is largely waged at the local level, in interactions between low level bureaucrats and citizens. While organized citizens instrumentally facilitate improvements in judicial outcomes, these interactions also hold the building blocks for a shift in deep schisms in state-society relations.

Appendix A

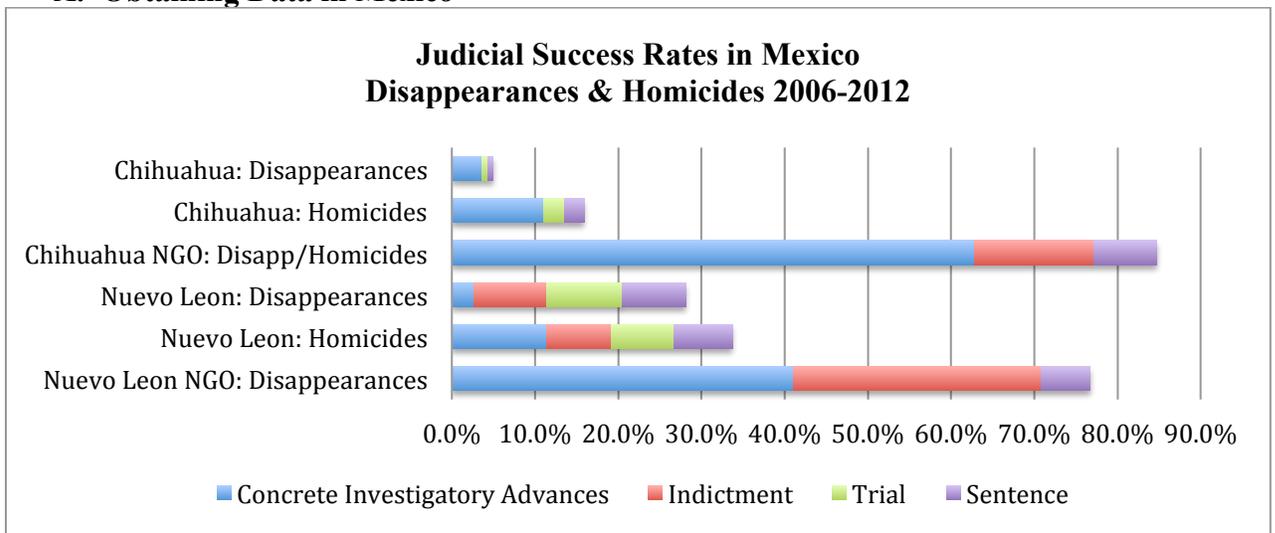
Methodology:

Obtaining Data in Mexico and Colombia

I. Dependent Variable: Judicial Outcomes

The key dependent variable in this dissertation is judicial outcomes. In this appendix, I first detail how I obtained the data from both the state and NGOs used in the descriptive judicial statistics in both Mexico and Colombia. Next, I introduce an original organizing schema and methodology that classifies the judicial stage of cases on a five-point scale, and note how I applied this rubric in both Mexico and Colombia (both under the oral and written systems of justice).²⁰¹ Finally, I discuss the issues that make obtaining and analyzing data difficult in both countries.

A. Obtaining Data in Mexico



²⁰¹ This section was written in collaboration with Dr. Ethel Nataly Castellanos and Camilo Castillo, both professors of law in Colombia. Dr. Castellanos specializes in comparative law, with a research focus on Mexico and Colombia.

These statistics are referred to throughout this dissertation. Where did these statistics come from and how did I arrive at these results? These data represent two distinct universes of data: state-generated data, and data generated by NGOs. The state-generated data capture all cases of homicides and disappearance filed in the state-level justice system between 2006 and 2012 in Chihuahua and Nuevo León.²⁰² In order to obtain state-generated data in Mexico, I filed information requests through the state-level transparency channels.²⁰³ After reviewing the penal codes in each state and determining which crimes could be relevant to the crimes of focus, homicides and disappearances, I made requests to two different institutions in each state: the courts (*tribunales*), who compile information on trials and sentences, and the investigative unit (called different things in different states: in Chihuahua, this unit is called the *Fiscalía*; in Nuevo León, Coahuila and Guerrero, the *Procuraduría*), which compiles information on the number of cases filed and the investigative progress of these cases.²⁰⁴ While it wasn't necessary in

²⁰² While these data capture all cases of disappearances/homicides *filed* at the state level, they exclude the following cases that may have *occurred* within a state: cases of disappearances and homicides held in the notoriously opaque military justice system; cases held exclusively in the federal justice system. Since approximately 80% of all crimes in Mexico are processed in the state courts, however, these data do capture the majority of homicides and disappearances that occurred in these states.

²⁰³ Transparency reforms in Mexico are among “the most ambitious open government reforms in the world” (Fox, Haight, Palmer-Rubin, 2008). INEGI, the National Institute of Statistics and Geography in Mexico, is the federal agency charged with collecting state-level crime and judicial statistics on the reporting of crime and certain judicial statistics. However, they do not disaggregate judicial statistics at the level of detail that I needed for my study: INEGI does not systematically track cases of disappearance, some years of data are missing for certain states, they do not consistently account for the different ways that crimes are classified and recorded in each state, and they fail to make clear which crimes are filed under the new vs. old systems of justice. Guillermo Zepeda Lucuona’s work (ex. “La investigación de los delitos y la subversión de los principios del sistema penal en México,” in Mendoza, Arturo Alvarado, ed. *La reforma de la justicia en México*. El Colegio de Mexico AC, 2008) has systematically used INEGI statistics to analyze the provision of justice in Mexico.

²⁰⁴ I filed at least one information request in Coahuila, Guerrero, Puebla and Yucatán as well, and collected complete data in Guerrero. I ended up excluding Guerrero from my analysis since there were no encompassing victim advocacy organization that accepted all cases of disappearances or homicides that it received. In Coahuila, I was unable to obtain the desired data, which I will discuss in the “difficulties with data” section of this chapter.

Nuevo León and Chihuahua, in each Mexican state there is an office in charge of access to information that serves as an appellate body, and that can obligate different state institutions to provide information.

Gathering information from NGOs in Mexico required extensive relationship building over the course of several years. As I discuss in Chapter Three, Mexican NGOs are generally reluctant to share details about the cases they receive and work on, and are often reluctant to work with and share information with each other,²⁰⁵ much less academics and foreigners. One NGO leader who asked not to be named told me that he was reluctant to share information about how many cases his organization received or accepted, as this would reveal to the state officials that they did not have that many cases – which would undermine their ability to apply political pressure. This organization had documented two cases of disappearances, but dropped them because of threats they received which presumably came from criminal organizations. This leader hypothesized that criminal organizations would all see them as weaker if they knew they represented fewer cases and fewer people.

I was told many times by family members of victims, NGO lawyers and leaders that they resent social scientists and international organizations that are “extractive,”²⁰⁶ who take

²⁰⁵ The RedTDT, the national coalition of human rights organizations, has made several attempts to launch coordinated and systematic databases in which local groups track their cases and work. Only a few groups have adopted these systems.

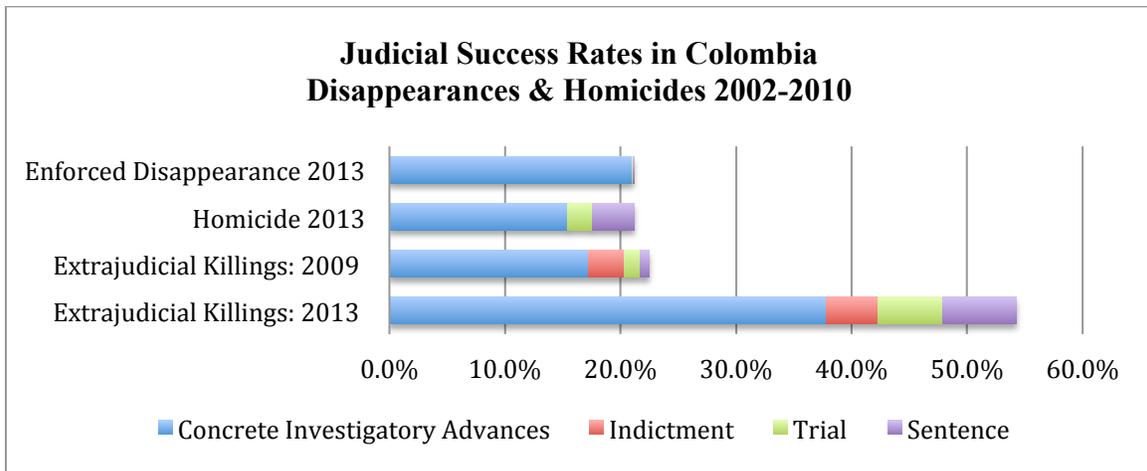
²⁰⁶ The word “extractive” references natural resource extraction, especially as a business model practiced by multinational corporations. In Latin America, these extractive industries – oil, gas and minerals – have met with widespread popular resistance recently, as they are seen as taking these resources and providing little or negative value to the local populations. “Extractive” when applied to scholars and human rights organizations commonly refers to the perception that these people are interviewing victims of violence and then getting some benefit from telling their stories, while the victims themselves see no direct benefit.

the information about the local cases they work on, and then use these data for their own purposes without remaining in communication and continuing to consult with the local organizations. While some people did express that the projects undertaken by these groups ostensibly benefit them in the long term or in international forums, the general attitude was one of deep suspicion. Because of this, a survey I had designed for all state-based human rights NGOs regarding their experience advocating and litigating cases of homicides and disappearances, which I had planned to administer together with the national human rights coalition organization, the RedTDT, was not feasible. While many groups agreed to have me interview them when I began my research in 2010, many either did not have systematic methods of tracking the cases they worked on, or were unwilling to share their data.

In Chapter Three I discussed the beliefs of Mexican civil society organizations, highlighting how they differ in their views of the state. Those more suspicious of the state, unsurprisingly, were also more suspicious of me as a researcher. The *Movimiento por la Paz con Justicia y Dignidad* (MPJD) which emerged in 2011 and was open to working with the state, academics and civil society organizations across the political spectrum, was in an expansionary and open phase in August 2011 when I first met with several of its members. After observing MPJD meetings for several months, I was considered a member, and was invited to take a leadership role in a caravan the MPJD was planning in the United States. Through my contacts within and work with the MPJD, I was introduced to state-level NGOs, several of which had previously not responded to my interview requests. These introductions led me to collaborate with several civil

society organizations during 2011 and 2012, conducting projects that had immediate value for them. In return, they allowed me access to their data. In Nuevo León, for example, the local NGO gave me a desk in a room with their lawyers for more than two months, and I assisted with the construction and upkeep of a database of all cases of disappearances they had received. In Chihuahua, where organizations are more accustomed to sharing information due largely to their longer history working with international organizations on cases of disappearances and murders, the process was much quicker: one organization published a list of the cases it received online. I sat down with their lawyers and went through the judicial status and investigative advances of every case. However, in order to obtain the meetings where this information was communicated, I had the national leadership of the MPJD make calls and introductions on my behalf.

B. Obtaining Data in Colombia



While the graphic above does not make it immediately clear, the Colombian data, similar to the Mexican data, represent two distinct universes of cases. The “Enforced Disappearances 2013” and “Homicides 2013” figures come directly from state-generated

reports, while the “Extrajudicial Killings” information from both 2009 and 2013 has been painstakingly compiled by NGOs. Extrajudicial killings are not a legal category in Colombia, though the crime is defined by international law and there is a UN Working Group on Enforced or Involuntary Disappearances that focuses on extrajudicial killings. Rather, extrajudicial killings are legally regarded as homicides and/or enforced disappearances. NGOs and social movements claimed extrajudicial killings as an important category of human rights violation in Colombia as they documented at first hundreds then thousands of cases in which lethal force was used by state agents against civilians.

Unlike Mexico, Colombia until recently had fairly minimal freedom of information laws, though any person is entitled by the constitution to file a request for documents, called a *derecho de petición*. Since I had worked in Colombia in 2006 and 2007 as a human rights accompanier with an international NGO, the Fellowship of Reconciliation, I understood much more of the culture of information sharing when I began the process of obtaining judicial outcomes data, and I also had much more legitimacy with the human rights community. In order to obtain data from the state on enforced disappearances, homicides and extrajudicial killings, on the advice of an information specialist at Colombia’s best-known and most credible non-governmental human rights reporting organization, CINEP (*Centro de Investigación y Educación Popular*, Center for Research and Popular Education) I asked Senator Iván Cepeda’s office to file an information request on my behalf with the relevant judicial bodies. Cepeda, a member of the left-wing Polo Democrático party and a son of assassinated Congressional Unión Patriótica candidate

Manuel Cepeda, agreed, and I obtained the 2013 records on enforced disappearances and homicides which are summarized in the above graphic.

As I discuss in Chapters Five and Six, Colombian NGOs went through several decades of professionalization, during which documentation of human rights abuses became central to their mission and practice. I was able to obtain the above statistics on the judicial status of extrajudicial killings in 2009 vs. 2013 directly as a result of these efforts. A Medellín-based NGO, *Corporación Jurídica Libertad* (CJL), had begun by 2009 to submit information requests (*derechos de petición*) to the Federal Attorney Generals' office *Fiscalía General de la Nación*,²⁰⁷ and to research the details of the cases themselves, including recording the name of the victim, the date of the commission of the crime, and the probable identity and/or affiliation (police, military, etc.) of the state agent involved in the extrajudicial execution.

CJL is part of the Working Group on Extrajudicial Killings, a working space of 210 human rights organizations that began in 1995. One of the lead organizations of this coalition, CCEEU, a Bogotá-based NGO which itself represents hundreds of Colombian civil society organizations, has continued to rigorously document cases of extrajudicial killings, documenting almost 5,000 cases by 2013. In preparation for a 2014 report, a comprehensive database of all of these cases was created by combining data on extrajudicial executions from several sources:

²⁰⁷ The results include the judicial results for cases of extrajudicial killings committed between 2000 and 2009 that were being investigated by the National Human Rights Unit (NHRU), a unit of the Attorney General based in Bogotá that currently handles 68 percent of investigations into Extrajudicial Executions (EJEs).

- *Fiscalia Unidad Nacional de DDHH* (National Human Rights Unit, Prosecutor General's Office)
- *Seccionales de la Fiscalia* (Regional office of the Prosecutor General's Office)
- *Coordinacion Colombia Europa Estados Unidos* (CCEEU, coalition of Colombian human rights NGOs, particularly the committee on extrajudicial executions)
- Center for Popular Education and Research, CINEP, to a very limited extent

One of the problems with aggregate data is that cases are often reported several times and it is impossible to eliminate the duplicates without identifying information. Because the CCEEU database contains case-level data, however, duplicates were eliminated by cross-checking the names of the victims and the dates of their murder.²⁰⁸ This database is highly confidential, as it contains case-level information that could put people at risk of harm if it became public. I was invited by CCEEU to view and work with this database in October of 2014 after meeting with members of their coalition on and off since 2006, and at the explicit request of my former boss in Colombia. The small organizations of family members of victims of violence, whose results I discuss in Chapter Five, were much more open and willing to share information with me than in Mexico, due partly to my background working in the Colombian field of human rights but primarily to the internal development and norms (see Tate, 2007: Ch 3).

II. A Generalizable Judicial Results Rubric

Once I obtained the aforementioned data, the next step was to interpret these data from two different countries, and from both state and non-state sources, so that they could be

²⁰⁸ This elimination of duplicate cases was done by John Lindsay-Poland, director of the Fellowship of Reconciliation's program for Latin America and the Caribbean, and personnel from CCEEU both for cases from the different *Fiscalia* offices (*Unidad Nacional* and *Seccionales*), as well as between these and the CCEEU data.

compared. Given the heterogeneity of the judicial systems between states and countries, the obvious drawback to a simple classification system is its simplicity: we lose much of the nuance that understanding each stage in each process gives us. With this loss of complexity, we risk conflating judicial stages that are in fact quite different. I argue, however, that what we lose in complexity we gain in being able to compare these judicial processes.

I utilize the following schema to classify the judicial stages of cases in Mexico's and Colombia's judicial systems. It is meant to be broad and simple, with the hope that it can also be applied to cases in other national contexts. This scale regards judicial processes and outcomes as fundamentally linear, or in other words as a continuous variable.

Judicial Results Scale

Stage 1: Reporting and documenting of the crime
Stage 2: Concrete Investigative advances
Stage 3: Indictment
Stage 4: Judgment
Stage 5: Sentence

Explanation of Scale:

1) Stage 1: Reporting and documenting of the crime

In every criminal case of the violation of the right to life, there is a moment in which the state comes to know of the violation, and then hopefully documents this knowledge in some systematic way that will later be reported. Most often, a

family member of the person who has been killed or disappeared reports the crime by going to a branch of the prosecutor's office. However, in cases of violations of the right to life in particular, if the prosecutor's office hears of the case in the news, from the police, or from a third party, it may also open an investigation.

- In Colombia, the Attorney General's office does not report the number of cases it documents. Rather, they report the number of "preliminary investigations" (*investigación previa*) they have opened in the written system, or "inquiry" (*indagación*) under the new oral system.²⁰⁹
- In Chihuahua, Nuevo León and in Coahuila the relevant authorities referred to cases in this stage as *iniciados*, initiated.

2) Stage 2: Concrete Investigative advances

Once a case is reported, in both Mexico and Colombia the most common fate of that case is that it is never looked at again. The action of opening the case file and beginning to look for possible responsible parties is therefore key. I classify cases that have had any type of action taken as having concrete investigatory advances.

These advances include:

- Cases that have simply been transferred to a different investigative unit, which is not necessarily an indication that they will continue to move forward in the justice system – especially if a case is transferred to the notorious military justice system.
 - In Colombia: *Remitido a JPM (Justicia Penal Militar), Conflicto de Competencia, En Espera JPM*
 - This action was not systematically reported in Mexico.

²⁰⁹ Though the above categories are the legally appropriate ones, the Colombian Attorney General also reported cases under the following categories that I also assigned to this stage: *En Averiguación, Preliminar, Previa, Investigación previa, Etapa de Investigación preliminary*.

- Cases in which the investigator has decided to close the case because of insufficient evidence. While this may not seem like an “advance” in the case, it does indicate that the case has proceeded past the act of it being reported and documented.
 - o In Colombia: *Inhibición* or *preclusión*²¹⁰
 - o In Mexico: in Coahuila this stage is called “concluded,” *concluida*; in Chihuahua, “archived” *archivo* or “No exercised action,” *No ejercicio/No inicio*; in Nuevo León, “Non-initiated,” *auto de no inicio* or “Non-exercise of penal action,” *no ejercicio de la acción penal*.
- Formal opening of the investigation against an implicated guilty party by the Investigator. As opposed to stage three, the accused is not necessarily notified that he or she is the target of the investigation at this stage.
 - o In Colombia: *Continuación, Instrucción, Investigación*

This is perhaps the broadest stage within this analysis. I include cases within this category which have had only a single investigatory action taken, which could include something as simple as interviewing one witness, up to cases which have had received hundreds of hours of investigative attention. Police investigators (from any branch: local, national, judicial), and investigatory officials (from the state or national prosecutor’s office) are the primary actors involved at this investigatory stage.

²¹⁰ Are also referred to *Prescripción de la acción penal, Archivo/Preclusión* in responses from the Colombian Attorney General’s response.

3) Stage 3: Indictment

While indictments differ between systems, they entail two fundamental elements. First, this is the stage in which the presumed perpetrator is legally accused of the crime, and also notified of this accusation. Second, a judge is involved in this stage in some way. While in the US, for example, there is a grand jury involved, this does not have to be part of this stage.

- o In both Mexico and Colombia, this is the stage in which the investigators complete their portion of the investigation and hand off the case to the judge. The judge can then choose to accept the case and move forward with a trial, to send it back to the investigators to gather more evidence, or to reject the case altogether. In Mexico, this stage is simply referred to as *consignación*, except under Chihuahua's new, oral system, in which it is called judicialization (*judicialización*).
- o In Colombia, this stage of the case involves a single judge under the older written judicial system, and two separate judges under the new written system. It also involves many more possible steps. Under the old system, this stage includes the *indagatoria*, during which the investigator cites the accused to give his or her version of events, and formally files charges against the accused.²¹¹ Following this, the investigator evaluates the evidence (*calificación del sumario*), and either closes the case (*preclusión*), or decides to present the investigatory packet to the judge (*resolución de acusación*) so that he or she may rule on the case.
- o Under the new oral system in Colombia, there are two steps in this investigatory stage: first, a public accusatory hearing, *audiencia de formulación de imputación*, is conducted in front of the evidentiary judge (*juez de control de garantías*). During this hearing, the investigator communicates to the accused that they have been formally charged with the crime. Next, the investigator presents the proof of the accused's guilt, and asks the trial judge (*juez de conocimiento*) to initiate the trial.

Investigatory officials (from the state or national prosecutor's office) and local judges are the primary actors involved at this investigatory stage.

²¹¹ If the accused does not appear to give a formal statement, there is a *declaración de ausencia*, declaration of absence filed, which would also be part of this stage.

4) Stage 4: Judgment

While this stage most typically includes a trial, under the written system (in which there is no trial), it includes the stage during which the judge considers the full amount of evidence that the prosecutor has compiled. This stage also includes the pre-trial hearings.

- o In Mexico: in Nuevo León the court labels cases that it accepts and brings to trial as *radicados*. In Chihuahua, all cases accepted are labeled as *causas*. In all states, if a trial is paused due to lack of evidence, this is called *sobreseimiento*.
- o In Colombia under the written system, this stage includes the “trial,” which entails the judge considering the facts of the case (*juicio*). Prior to the *juicio*, a preparatory hearing (*audiencia preparatoria*) is held during which the investigator and accused have a final chance to present the evidence that will be considered by the judge. There may also be a public hearing (*audiencia pública*) in which outside parties may present or challenge the evidence that has been presented.
- o In Colombia under the oral system the *juicio* and *audiencia preparatoria* are included, as well as the oral trial (*juicio oral*) and the accusation hearing (*audiencia de formulación de acusación*).

I also include cases in which the trial ended up in a verdict of innocent (*sentencia absolutoria*). The logic here is that the case did proceed into the judgment phase, but did not achieve the sentencing of a guilty party.

5) Stage 5: Sentence

If at least one person is found guilty for the commission of the crime, it is classified as “sentenced.” This also includes cases in which a plea bargain was

reached under which a guilty party admitted his/her responsibility, but in which a trial was not conducted.

I also include cases that have been appealed in this category. Though cases under appeal may ultimately be overturned, at the time of the appeal the case has progressed passed the stage of judgment, and therefore belongs in this category.

Again, it could be argued that by including cases that have been appealed here I am overstating the provision of justice.

- In Mexico, cases in this stage were reported as “guilty sentence” *sentencia condenatoria*.
- In Colombia, this stage is reported as sentenced, *sentencia*. I also categorized cases in this category in which the victim had received some remuneration from the accused for the crime, *incidente de reparación integral*.

Notes on Judicial Results Scale:

In some, if not most, cases of violations of the right to life, there is more than one guilty party being investigated. In these cases, the investigations of these different individuals may progress at different rates through the judicial system, meaning that one case could have multiple perpetrators at different stages. I have classified these cases under the most advanced judicial process. That is, if three people are being investigated under separate judicial processes for the disappearance of one individual, and one case is in the “investigation” stage, one case in the “judgment” stage, and one in the “sentencing” phase, this case will be given a “5,” signifying the sentencing phase. Again, this could be

said to understate the rates of impunity, but I believe it is consistent with placing the violation of one person's right to life at the center of analysis.

This judicial scale does not include any information on sentence implementation, and it is certainly true that many times when someone is sentenced for the commission of the crime they do not actually serve the full sentence, and perhaps not any of it. It is also well-documented that perpetrators serve their sentences under very different conditions: in 2011 a scandal erupted in Colombia over the luxurious and lax conditions under which members of the military convicted of human rights violations were serving their sentences. Prisoners could come and go as they pleased, leave to take vacations, run businesses from inside the prison, and often were still on the state's payroll.²¹² Ideally, I would include data on whether a sentence was actually carried out and have some measure of the conditions of incarceration, as these are certainly relevant measures of the provision of justice. However, data on sentence implementation are held by yet another state entity (the state and national prison systems) in both Mexico and Colombia, and I was not able to obtain these data for this analysis. Further, there is no systematic data on prison conditions in Mexico and Colombia that I know of.

Reflections on the Importance of a Common Judicial Scale:

I have just offered an extensive narrative and organizing schema concerning how I obtained and classified judicial results data. Why is this a useful exercise outside of the narrow confines of this dissertation? Policymakers, legal advocates, social movements and a growing number of scholars increasingly recognize the importance of improving

²¹² See "Tolemaida Resort. Accessed 2/17/14: <http://www.semana.com/nacion/articulo/tolemaida-resort/237791-3>

the provision of justice as both a stand-alone goal and as a means to strengthening the rule of law and deterring further legal violations. In order to meaningfully analyze the provision of justice, however, we first need to gather data about the performance of the judicial systems and make it understandable to the broader audience of interested parties.

Where does international data about the judicial outcomes within domestic legal systems currently reside? And how can we both access it and make sense of it so that it may be used to inform and ultimately improve the performance of these systems? Judicial outcomes data is surprisingly difficult to access. There is no international body, organization nor academic institution that systematically collects and classifies domestic judicial outcomes.²¹³ Most domestic judicial outcomes data resides within the judicial bodies charged with making those decisions. These results are classified according to the local, state or national laws, and most often are not understandable to anyone but the people directly involved in the local legal system: judges, prosecutors, and lawyers. In practice, this has meant that legal outcomes are largely opaque to the local public, to policymakers within the domestic context, to international aid professionals, and of course to scholars.

This opacity certainly serves the interests of many of those within the legal system. When judicial performance is put in the spotlight, it is most often around a specific case or set

²¹³ The World Justice Project has developed a Rule of Law Index in which they use surveys of citizens and experts to assess “effective criminal justice system” along the following lines: crimes are effectively investigated; crimes are effectively and timely adjudicated; the correctional system is effective in reducing criminal behavior; and the criminal justice system is impartial. These measures, while useful, measure people’s perceptions of justice systems, and do not provide data on judicial results. See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1966257

of cases, for example, around the case of a high-profile political killing. While there may be popular calls for justice in this particular case, and the media may follow the judicial progress of this specific case closely, these demands most often do not translate into calls for systemic and institutional changes within the justice system, and political pressure is most often alleviated with progress in the particular high-profile case. Since a systematic analysis and understanding of patterns of judicial behavior is rarely available, critiques of systemic failures in the provision of justice often lack rigorous evidence. Additionally, limiting analysis of the provision of justice to those directly involved in processing the cases preserves the privileged professional space that the interested parties have created. If only lawyers, judges and prosecutors can understand what is happening within the justice system, they preserve their value and create demand for their expertise.

For many of these reasons, I decided to work together with legal experts in Mexico and Colombia to construct the judicial results scale presented in this chapter, with the result being a continuous variable that can be used by policymakers, advocates and qualitative and quantitative scholars. My hope is to contribute to the burgeoning scholarship that rigorously assesses judicial results.

III. Difficulties with Judicial Data

A. Judicial Success? Wrongful Convictions in Mexico and Colombia

Throughout this dissertation I frame the process of a case proceeding from one judicial stage to the next as “positive,” and I claim to measure “judicial success.” However, we know that every justice system wrongly accuses and convicts some of its citizens – which

means that in these cases every successive step of judicial “progress” is actually quite the opposite, as it moves judicial processes towards convicting an innocent person. In Mexico, a primary mechanism that produces this injustice is the common “investigatory” practice of using torture to extract confessions, which are then used as the primary evidence to justify convictions. In Colombia, social movement leaders are routinely falsely accused of various crimes in an effort to paralyze their political activity by involving them in legal processes and perhaps by jailing them. There is no way to measure how many innocent people are convicted using these nefarious practices, and therefore we can assume that some of the cases that I count in my aggregate statistics as “judicial successes” are actually gross miscarriages of justice. I argue in Chapters Four and Six, however, that those cases advocated for by civil society are less likely to convict an innocent person: when civil society advocates are involved in the investigation of the cases, they provide increased transparency and accountability.²¹⁴ An investigator may be less likely to be able to get away with accusing someone who had nothing to do with the commission of the crime if they are working collaboratively and in good faith with advocates who know the case well. Nonetheless, all of my data, that generally paints judicial progress in a positive light, presumably has this problem.

²¹⁴ There are, however, counter-examples: In the case of the massacre at the Villas de Salvárcar housing development in Ciudad Juárez, Mexico, a local man named Israel Arzate was arrested for his role in massacring a group of innocent teenagers. Mexico’s leading human rights organization later took on Arzate’s case, arguing that his confession has been obtained through torture, and that there was no evidence of his involvement. Many of the parents of these teenagers accused those who defended Arzate as defending a killer and obstructing justice.

B. Mexican Judicial System: Decentralized Federal System in Transition

The difficulty of understanding the legal systems in Mexico and Colombia lies largely in the complexity and diversity of judicial processes, as demonstrated by the different nomenclature for the different judicial processes described above. In Mexico, the federal system means that cases are documented, filed and proceed through the justice system differently in each of the 32 states. Each state has its own penal code, and ratifies national laws pertaining to the judiciary in their state legislatures, making their own modifications along the way. Since more than 80% of all cases are decided within the state courts, this heterogeneity in the penal code means that most cases are decided using laws and procedures that only actors in the state context fully understand.

Cases may be filed in various states and within the national judicial system simultaneously,²¹⁵ and they will receive different identifying numbers within each of these systems, and perhaps include different victims, events, and suspects. For example, take a case in which three people were disappeared from a single place by two separate suspects. In the state courts, the investigation of this case may include all three victims' names, while in the national system, perhaps it will be filed under a single victim's name, and another suspect may be added. While the family members of the victims and their advocates may know that this is the same case, prosecutors within the different bodies do not always coordinate their investigations, and may not be aware of the progress made by

²¹⁵ In addition, cases may be filed within the state and national Commission on Human Rights, which are Mexico's version of NHRIs, National Human Rights Institutions. In this dissertation, I do not talk extensively about these Commissions because they do not have binding judicial authority, nor do they systematically gather evidence about prosecutions of state officials. Both the state and national human rights commissions make optional recommendations to the Prosecutors' offices, but I find that they do not significantly impact the provision of justice.

the other entity. While the federal system supposedly deals with crimes related to organized crime, in most cases of murder and disappearance the perpetrator is not clear. This means that there is a rationale for trying the case within the state or national system, resulting in the confusion discussed above.

In Mexico, besides cases being classified within the national and state systems, within these state systems cases may be tried under the new (oral, or accusatory) justice system, or the old (written, or inquisitor) system. Different states during the period of my study were in different stages of implementing this reform: Chihuahua implemented this reform in 2007, whereas Nuevo León was only beginning to implement the reforms in 2013. Further, the implementation looks different in each state: Nuevo León decided to implement the oral justice system one crime at a time starting with non-violent and less serious crimes. That is, in 2012, all cases of, for example, robbery were handled in the new justice system, while cases of murder were still handled in the old system. The new system has a different set and order of judicial proceedings, making comparing progress within the two judicial systems quite difficult.

To complicate things even further, in Mexico each state has its own criminal code that classifies crimes in different ways. This means that the same crime may fall under different categories. Most importantly, as of the spring of 2013, only about 17 of Mexico's 32 states recognized the crime of enforced disappearance. In Nuevo León, which did not pass a law against enforced disappearance until 2013, most disappearances continue to be classified as illegal deprivation of liberty.

Figure A.1:
Legal Categories Disappearances are filed under in Mexico by state, 2006- 2012

Guerrero	Chihuahua	Nuevo Leon
<i>Privacion Ilegal de la Libertad; Illegal Deprivation of Liberty</i>		
	<i>Desaparición Forzada de Personas; Enforced Disappearance</i>	
<i>Secuestro; Kidnapping</i>		<i>Secuestro; Kidnapping</i>
		<i>Rapto, Abduction</i>

While this system is confusing for victims of violent crime, it is also difficult to navigate for most members of the press or public who attempt to systematically track cases through these systems. The existence of cases within both national and state courts with different identifying case numbers, names of victims and details means that duplicating cases when analyzing judicial results is almost unavoidable.

Finally, I encountered insurmountable problems obtaining data from the state in Coahuila, and because of this I do not present Coahuila judicial results alongside the Nuevo León and Chihuahua statistics. I attempted to obtain these statistics over the course of a year, and after several instances of information requests being lost, and being directed to talk with people in offices which proved not locatable, I was told by the Coahuila court that it was “materially impossible” to provide specific results, as they only aggregate general statistics. I ultimately received information that wasn’t what I had asked for from the prosecutor’s office, and which I suspect is not reliable for reasons I discuss below. The information provided to me by the prosecutor’s office in August 2013

was initially presented by Coahuila state officials at an international forum in June 2013. At this international event, which counted representatives from the Mexican President's office, Amnesty International, Human Rights Watch and the United Nations among the attendees, the state prosecutors office claimed high rates of "finding" people who were "missing, lost, people for which there was an amber alert issued, and people that were found dead." In 2013, for example, the Coahuila investigator's office claims that it located 310 people, and failed to find 327 people. This "find rate" of almost 50 percent would be a truly remarkable success if it were true. Several things, however, make me skeptical of these numbers. First, in the same document, it report receiving only 10 cases in 2013 that were filed under "deprivation of liberty" or "kidnapping;" 28 cases of abductions; one case of trafficking and zero cases of enforced disappearance. Since these are the categories under which disappearances are usually filed, it is unclear what the cases of people being "found" means – if they were found but were never registered as disappeared, this makes these cases not comparable to those I document in other states. Next, when these numbers were presented to FUUNDEC, the social movement of family members of victims in Coahuila that has more than 100 members, they reported that of the supposed 310 cases of people that had been "found," not one of these cases was one that they had documented or were familiar with, and the government declined to say who these people were.²¹⁶ Finally, the numbers of people "found" were publicly presented as evidence by the government of Coahuila that they were doing something to combat disappearances. That is, unlike the cases in the other states in which I submitted information requests and information was returned to me in the form in which I had

²¹⁶ Together with a researcher from Human Rights Watch, we were handed a jump drive at the June, 2013 conference, which supposedly contained case-level information on these cases. The file was corrupted, and repeated follow-up calls yielded no response.

requested it, this information had been produced in response to political pressure, and I believe manipulated to present the best face possible of the Coahuila investigative unit. In other words, the very data I was asking for had become politically contentious in Coahuila, changing its probable reliability in the process.

C. Colombia: A Unitary System

When cases are filed in Colombia, local prosecutors are assigned to investigate the cases. Unlike Mexico, in Colombia all cases are subject to the same laws, regardless of the state in which the violation was committed. These cases will remain with the local prosecutor, unless they are deemed human rights violations, and in this case they may be transferred to a special national investigative unit – the National Human Rights Unit (NHRU). The criteria for which cases are transferred to the NHRU are unclear, and according to my sources, it is a political decision above all else. Further, many cases filed against state agents are controversially assigned to the Military Justice System, even if the crimes committed occurred outside the time and scope of military service. These fairly arbitrary decisions have a large impact on both the outcome of the cases, and on the likelihood that information about the case will be accessible via information requests, with cases in the military justice system essentially disappearing from public view.

Another complication in classifying cases under Colombia's written judicial system, known as Law 600 (which establishes the basic infrastructure of the Colombian justice system) is that a case can be closed at any stage of the investigation by the state investigator. During the initial stage, the investigatory stage, or the trial phase of the investigation, a "resolution to close the case" *resolución inhibitoria/preclusión* can be

declared by the investigator. I classify all cases that have been closed in Stage Two, the Concrete Investigatory Advances Stage. I do this because in the data received from the state prosecutor's office, a case is simply classified as closed (preclusion). Since the prosecutor, not the judge, is the one who takes this action, I argue that this is appropriately categorized as Stage Two in the Judicial Scale.

D. Disappearance vs. Enforced Disappearance

While the definitions of crimes between the two countries are often quite similar, the way in which these categories are applied by both the state and NGOs differs greatly. Again, going back to the crime of enforced disappearance, which by definition implicates state agents in the commission of a disappearance, or of acquiescence in the face of this crime: in Chihuahua, where this crime has been on the books for some time, it is still rarely applied by state investigators, and most cases of disappearance are recorded as illegal deprivation of liberty. I heard from multiple victims who had concrete evidence that implicated police or military as responsible for a disappearance that the police officer or investigator taking their statement reporting the crime refused to classify their complaint as enforced disappearance. In Coahuila, while the state didn't make "enforced disappearance" a crime until 2013, the local NGO considers all disappearances "enforced disappearances" because of the "acquiescence" of the state faced with what they view as a crisis of disappearances. Finally, in Colombia most cases in which there is evidence that people were disappeared against their will are classified by the state as enforced disappearances, even when there is not strong evidence that the perpetrator was a member of the state.

While I personally experienced difficulties with data collection, family members of victims themselves endlessly recounted their difficulties obtaining and making sense of the judicial status of the case of the murder or disappearance of their loved one. As the people closest to these cases, these mundane and bureaucratic problems are what occupy much of the time and energy of this traumatized population. For the family members of victims, policymakers and researchers, the policy implications of difficulties obtaining data are clear: to standardize and simplify criminal codes and classification procedures, and to improve transparency.

Appendix B:

Innovation, Ethics, Safety and Access

1. Fieldwork in Dynamic Contexts: The Importance of Innovation

When I began my research for this project in 2010, the magnitude of the humanitarian crisis Mexico was experiencing was just becoming clear. Legal mobilization in 2010 was state-based and led by established local human rights organizations: although there had been several large protests against violence in Mexico City, there was no national grassroots movement. Things changed rapidly, however, as violence and the provision of justice became national issues. In May 2011 a national social movement, the Movement for Peace with Justice and Dignity (MPJD), emerged on the national stage, and it became clear that in order to understand how the provision of justice and legal mobilization worked in different states, I needed to understand the national and international dynamics at play that were influencing both the strategies of citizen-led organizations, and the judicial results of the cases they were advocating. Prior to the emergence of the movement, I had conducted semi-structured interviews with human rights professionals, and planned to conduct targeted fieldwork in four southern states. This state-centric strategy no longer could credibly claim to capture the information relevant to determining judicial success given the dynamic national context.

In order to understand the dynamics of the evolving movement-state relations, I decided that my primary mode of data collection would be ethnographic observation within the

MPJD, local human rights organizations, and emerging groups of family members of those killed or disappeared located in many states – and especially in the north of Mexico. The methodological move towards ethnographic observation was necessary in part given that organizations' and movements' strategies were emerging: an interview with any of these actors about their litigation and mobilization strategies would have been outdated days or weeks later, as these strategies were constantly changing. As methodologists in political science are increasingly recognizing, ethnographic observation also allowed me to capture the dynamic evolution of these movements, and to observe how these new and more-established movements interacted with each other. The dynamics constituting advocate and activist identities, for example, were barely visible in my semi-structured interviews. In the many meetings I attended, these dynamics became clear.

2. The Ethics of Working with Victims

I spent the plurality of my time in the field working with family members of people whose children or other family members had been disappeared or murdered. While the IRB process is meant to address the security and ethical concerns of research, I found that its reliance on informed consent as the appropriate and sufficient method to ensure ethical treatment of both the NGO workers and victims of violence inappropriate and problematic. When I began my work on this project, as described previously in this section, I had thought I would conduct semi-structured interviews. As circumstances changed and my research methods shifted towards ethnographic observation, the information I was collecting gradually changed. As I built trust with victims of violence,

they began to share the details of their experiences with litigation with me. I also began to have access to confidential details of reported cases through my contact with lawyers and NGO workers. While I had notified IRB of the change in my methodology,²¹⁷ there was no prompting from them to review the security protocols I had proposed. To the contrary, as long as I received informed consent, according to IRB I could have shared all of the information the people I interviewed gave me.

While I followed the informed consent procedures during my conversations with victims of violence, activists and advocates, it was a culturally inappropriate tool. What people shared with me was determined by how much they trusted me and who had introduced us – not by formal, technical distinctions between an “off the record” conversation and an “on-the-record” conversation. People opened up to me because they believed I would treat the information they shared with discretion, and they told me so. In other words, they put the onus on me as a researcher to judge what confidential information I should share. For IRB, this was enough: their informed consent entitled me to share details about cases that would have been entirely inappropriate and potentially dangerous.

Having been trained as a human rights accompanier, I was fortunately equipped with the resources to make informed decisions about the information people shared with me. I made the decision to only reveal details of cases within this dissertation by their real name if they have already appeared in other media sources, and as a default position, to

²¹⁷ In my 2012 application for renewal of my IRB states, I stated that: “The major change to the project has been a change in the primary methodology employed in my data collection. I am largely taking ethnographic field notes and engaging in participant observation instead of doing extensive interviewing.” Their response was: “Are the interviews in English or Spanish? If Spanish, the IRB will need translations of the consent script and a back translation into English. Please also send questions you will be asking.”

anonymize interview responses, attributing them to staff people of an organization rather than to particular individuals. For cases in which I share details not available in other media sources, I obscure all identifying details.

Finally, there is little scholarship on methodology aimed towards political scientists that addresses the question of how to do research that isn't what I heard both activists and researchers refer to as "extractive." I found the discussion of interviews and ethnography lacking in thinking through basic issues of how to do no harm and be of use during my doctoral training. As I was working with traumatized victims who believed that access to international audiences would improve their chances of finding their loved ones and accessing justice, I decided that I would attempt to be "of use" by accepting the MPJD's request that I coordinate a multi-national mobilization effort designed to raise the visibility of their cases specifically, and more generally to draw attention to the issue of enforce disappearances and murders in Mexico. Was this an effective use of my time? Was I "of use"? Was I doing "no harm" during my research? These questions are largely absent from mainstream political science training in methodology and ethics.²¹⁸

3. Safety & Access

While both Mexico and Colombia are ostensibly violent contexts, I rarely felt in danger because of the questions I was asking or the work I was doing. Again returning to my training as a human rights accompanier, I conducted security analyses of new places I

²¹⁸ While interpretivists (e.g. Schwartz-Shea and Yanow 2012) and scholars focused on ethnography (e.g. Schatz, Edward ed. 2009) have begun to discuss these issues, there has yet to be a significant effort to discuss ethics across epistemologies, methodologies and sub-fields.

traveled to, and as a rule only went to places known to be dangerous if a civil society actor knew I was coming, and indicated that it was safe for me to be there.

In Mexico, it was much harder to gain access to the state than in Colombia. I interpret this as a consequence of the federal system: state-level (as opposed to national-level) actors simply have very little to gain from talking to me. In Colombia, high-level officials still seem to think that what a US-based academic says about them might in some way impact their reputation. In Mexico, I perceived that local officials quite logically concluded that nothing I ever wrote would affect them, and hence talking with me was not worth their time. In Nuevo León, for example, I had enormous trouble getting a meeting with the State Attorney General's office. Following one of the meetings between local NGO CADHAC, the MPJD and officials from the Attorney General's office (*Procuraduría*), the two top civil society leaders asked the *Procurador*, in front of cameras, to agree to meet with me. He said he would. When I tried to follow up on this promise, I was told to submit written questions and *Procurador* would get back to me. After weekly calls for ten weeks, the *Procurador's* secretary suggested I give up: I would not be receiving any answers, nor would I get a meeting with the *Procurador*.

As the door was shut to me to meet with state officials, I found that the only way in was to accompany civil society organizations. In Monterrey, after building trust with CADHAC over the course of 12 meetings, I was invited to observe from the inside of the *mesa de trabajo*, the official meetings between CADHAC and state officials. I was finally able to interview investigative officials from the *Procurador's* office only when I

accompanied CADHAC to meetings. In Chihuahua, I found state officials comparatively more forthcoming: although they would not agree to meet me when I called them, after meeting me at an event, several low level investigative staffers were eager to give their side of the story after they had been lambasted in international forums, including the Inter-American Court of Human Rights and the UN, for so long. In Coahuila, as detailed above, I found that the state officials smiled widely and promised to give me information and interviews, but in the end failed to do both.

Appendix C

Additional Colombia Data

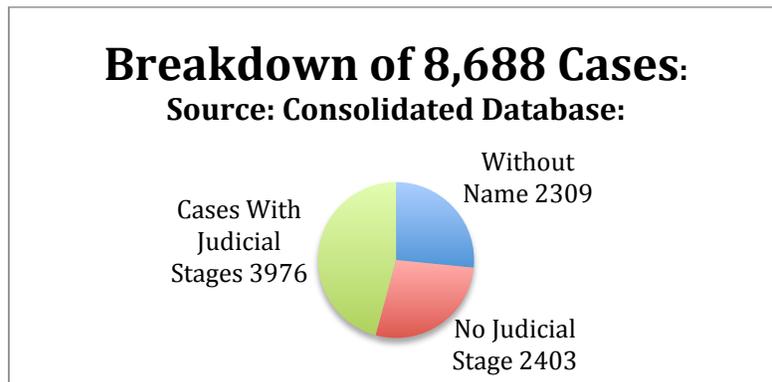
I. Discussion of Data Sources

Though impunity is one of the most talked about human rights and policy issues in Colombia, there is a surprising dearth of information and understanding of this issue. Many critics of the government claim that there is total impunity, while government officials paint a more positive picture, highlighting success in highly visible cases (like the Soacha case). Both of these groups rely surprisingly little on judicial results, which as I argue in my Appendix A, is largely because judicial results remain understandable only to those intimately familiar with the justice system: defense lawyers, judges and prosecutors. This lack of information excludes both policymakers and civil society from the most important metrics by which to evaluate judicial performance: whether cases are progressing through the system, and what percentage of them are being brought to resolution.

Throughout this dissertation I applied the original judicial rubric introduced in Appendix A. These descriptive statistics on judicial successes rely on data requests I filed with the Colombian state, and also on data obtained in collaboration with other researchers and NGOs. These data capture, as much as is possible, the entire universe of cases of extrajudicial killings perpetrated by the military in Colombia between 2000 and 2010. This database includes case-level data for over 8,688 victims of extrajudicial killings. Of these cases, the descriptive statistics in this chapter analyze the judicial results in the

3,976 cases in which information about the judicial stage, as well as victim names, perpetrator names, dates, and location of the case was available. These data were drawn over the course of ten years through a compilation of data from governmental and non-governmental sources, and represents the combined labor of a broad coalition of Colombian and international NGOs.

Figure C.1 Universe of Extrajudicial Executions Cases



I use process-tracing to explain the change in judicial behavior following the “false positives” scandal. This narrative draws evidence from original descriptive statistics of judicial results and interviews with members of civil society organizations that participate in legal advocacy and/or mobilization around the issues of enforced disappearances and extrajudicial executions. I also draw from secondary sources; most prominently evidence gathered by a United Nations official who was integrally involved in pushing the Colombian state to change its behavior around extrajudicial executions.

I draw heavily from one particular secondary source. Christian Salazar, the Director of the Office of the United Nations High Commissioner for Human Rights from 2009-2011,

in 2012 published a rare article chronicling the largely internal, usually opaque²¹⁹ high-level negotiations undertaken by the different actors within the Colombian state, the UNHCHR, and several embassies. Salazar's position as head of the UNHCHR gave him the legitimacy, knowledge and access to construct a narrative of the behind-the-scenes negotiating over government human rights practice and impunity rarely previously seen. He conducted 22 anonymous interviews with high-level government, army, UN and other officials who had been personally involved in managing the false positives scandal, and compiles internal Colombian government and UNHCHR documents. His article, and my subsequent interview and communication with him, offers a rare glimpse into how impunity is actively defended by certain institutional interests, most prominently the army in this case, and demonstrates the crucial and complex role of political will in enabling judicial success.

II. Judicial Status of Cases of Violations to Physical Integrity in 2013

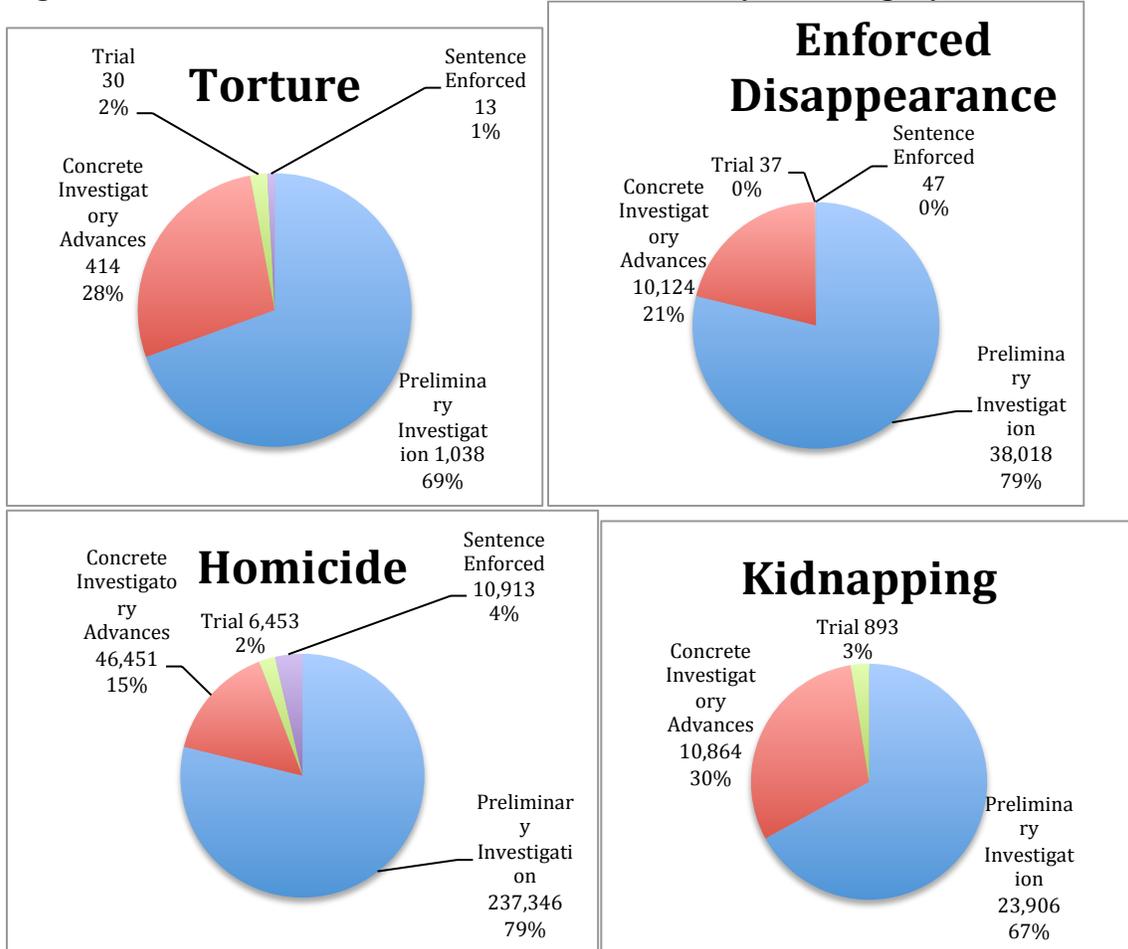
Source: Fiscalía General de la Nación

In order to appreciate what a remarkable comparative “success” occurred in cases of extrajudicial killings in 2013, it is important to put these judicial results in the context of the larger universe of cases of violations of the right to life. Less than three percent of

²¹⁹ Phillip Alston, the former Special Rapporteur on extrajudicial executions, in his preface to the Salazar article, explains this problem adeptly: “Evaluation [of human rights practices] is ideally undertaken by objective and impartial external experts. But all too often the outsiders have neither the requisite expertise nor the access to enable them to do other than a superficial assessment. The insiders, for their part, generally do not have the incentive or the necessary degree of detachment to enable them to undertake a compelling evaluation of the work with which they have been engaged” (Salazar, 2012: 396).

homicides, and less than one percent of forcible disappearances, committed between 2002 and 2010 had made it to trial as of February, 2013.^{220 221}

Figure C.2 Judicial Status of Cases of Violations to Physical Integrity



²²⁰ Original calculations based on author-solicited statistics provided by *Fiscalía General de la Nación*.

²²¹ As a point of reference, in the United States, in 2010 64.8% of all murder and negligent homicide cases resulted in a perpetrator being held legally accountable <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl25.xls>. Accessed 1/11/14.

The following figures provide a disaggregated view of the performance of state-based courts and the NHRU, as well as cases within the oral and written systems of justice. The final figure is the Spanish language rubric I developed together with Ethel Nataly Castellanos and Camilo Castillo to classify different judicial stages in Colombia.

Figure C.3: Cases in the Oral and Written system in the State-Based Courts and National Human Rights Unit

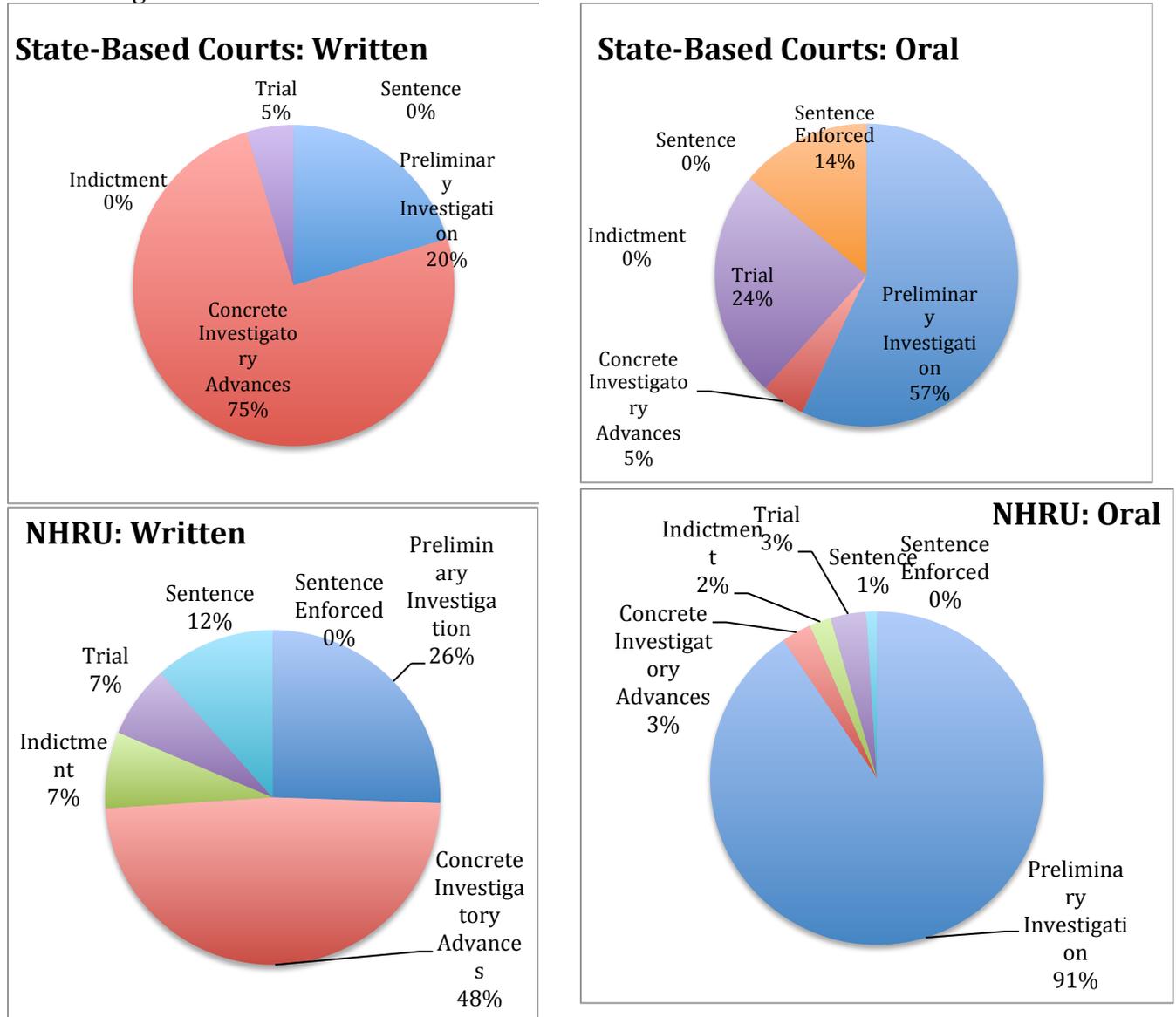


Figure C.4: Progress of Cases in National Human Rights Unit 2013 vs. 2009

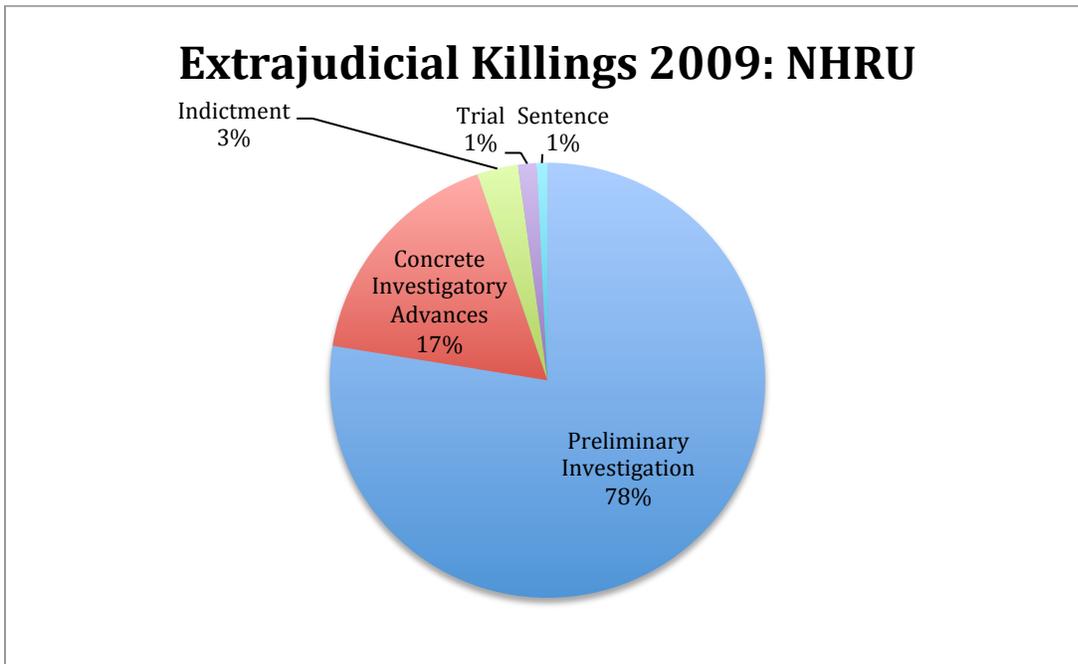
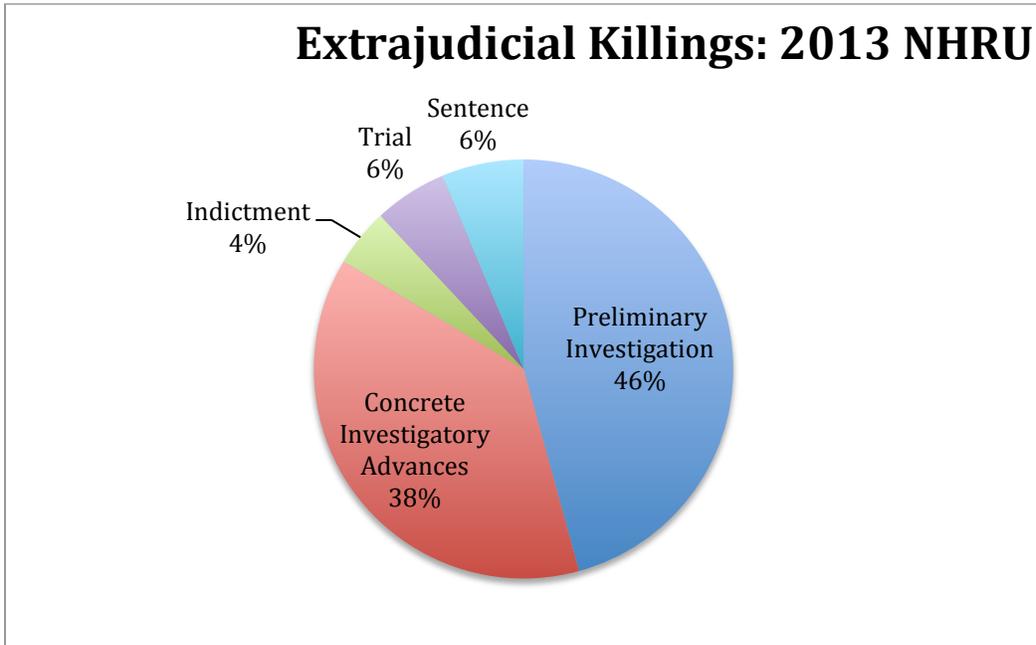


Figure C.5 MAP OF EXTRAJUDICIAL EXECUTIONS BY MUNICIPALITY, 2000-2010

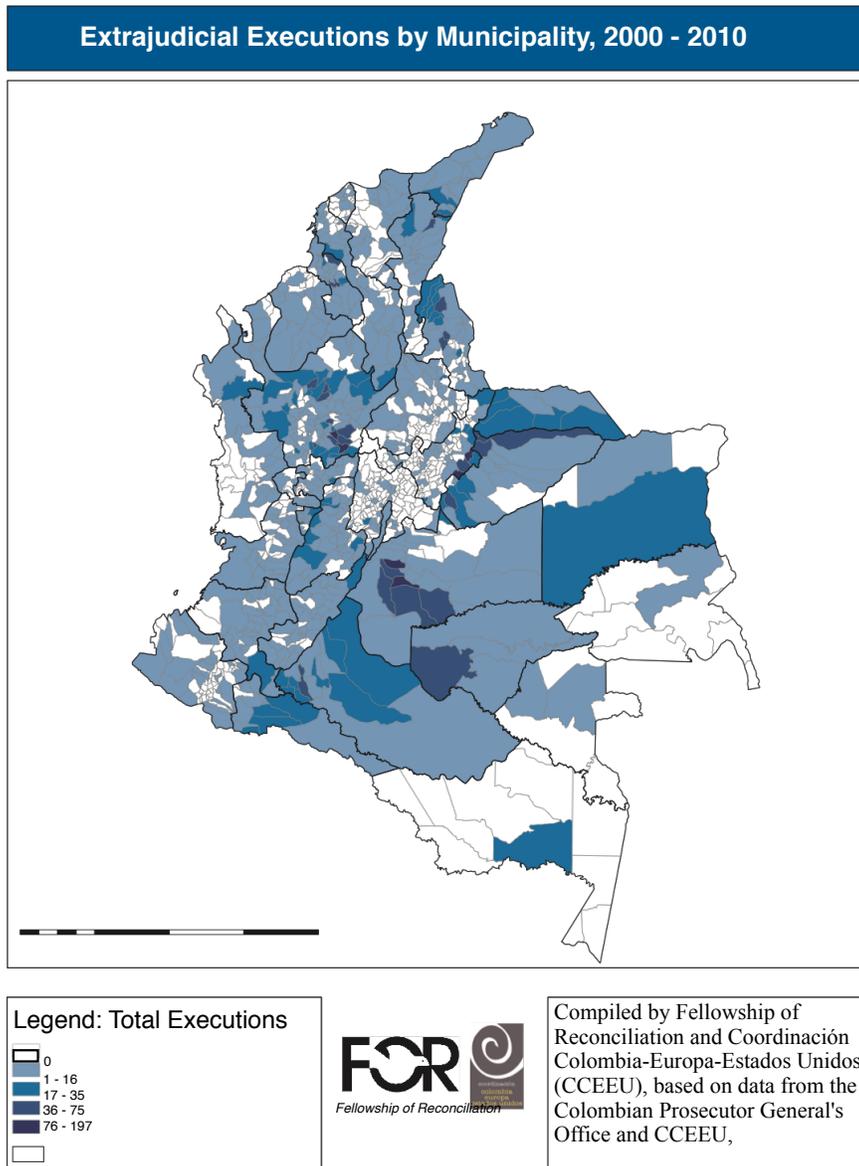


Figure C.6: Categorization of Judicial Stages, in Spanish

Justificación de Categorización de Etapas Judiciales

# de etapa	# Secuencial	Resultados Jurídicos: Ley 600	# de etapa	# Secuencial	Resultados Jurídicos: Ley906
Etapa 1: Etapa Preliminar : Investigación					
1		INVESTIGACIÓN PREVIA. Corresponde a las primeras actuaciones del Fiscal cuando recibe una noticia criminal, una querrela o debe investigar de oficio.	1		INDAGACIÓN. Este procedimiento es cuando el Fiscal comienza la investigación penal por noticia criminal, por querrela, o por que debe investigar de oficio.
1		<i>Nombres de etapas adicionales dado por la fiscalía que asignamos a esta categoría: En Averiguación, Preliminar, Etapa de Investigación preliminar</i>	1		
Etapa 2: Avances Concretas Investigatorias:					
2	2.0	CONFLICTO DE COMPETENCIA: Se presenta cuando varias jurisdicciones consideran que pueden conocer un caso. En los casos de DDHH el conflicto de competencias suele darse entre la justicia penal militar y la jurisdicción penal ordinaria. Los conflictos de competencia pueden ser positivos o negativos en términos de avances jurídicas. Positivos cuando las jurisdicciones reclaman competencia sobre el caso. Negativos cuando ninguna de las jurisdicciones reclama el conocimiento del caso. En general los conflictos de competencia en materia de DDHH ocurren cuando la jurisdicción penal militar y la jurisdicción penal ordinaria reclaman el conocimiento del caso. Interpretamos esta acción como avance concreto porque indica que hay pruebas suficientes del presunto responsable para indicar la jurisdicción apropiada **			
2	2.1	INHIBICIÓN. Es cuando el Fiscal no encuentra elementos que vinculen a un presunto responsable por la comisión de un hecho ilícito. Sin embargo, es posible que el Fiscal vuelva a investigar al presunto responsable por los mismos hechos.	2		PRECLUSIÓN. Es cuando el Fiscal no encuentra elementos que vinculen a un presunto responsable por la comisión de un hecho ilícito. Sin embargo, es posible que el Fiscal vuelva a investigar al presunto responsable por los mismos hechos.
2	2.2	CONTINUACIÓN. En esta etapa el Fiscal encuentra que hay elementos suficientes para abrir una investigación penal en contra del presunto culpable por la comisión de un hecho ilícito.	2		CONTINUACIÓN. El Fiscal considera que hay elementos de juicio para iniciar una investigación formal contra el presunto responsable
2	2.3	INSTRUCCIÓN. Es cuando el Fiscal abre formalmente la investigación penal para determinar si hay elementos de prueba suficientes para llevar a juicio al presunto responsable de haber cometido un hecho ilícito.	2	2.3	INVESTIGACIÓN Es cuando el Fiscal abre formalmente la investigación penal para determinar si hay elementos de prueba suficientes para llevar a juicio al presunto responsable de haber cometido un hecho ilícito. En esta etapa ya se presupone la existencia de un proceso penal.
2		<i>Nombres de etapas dado por la fiscalía que asignamos a esta categoría: Prescripción de la acción penal, Archivo/Preclusión, Aseguramiento</i>	2		

Tipping the Scales of Justice

Etapa 3: Juicio					
3		JUICIO. Esta es la parte acusatoria de la Ley 600, pues aquí el Fiscal deja de dirigir el proceso y lo hace el juez directamente. El fiscal se dedica exclusivamente a acusar al presunto responsable.	3	3.0	JUICIO. Esta Etapa es ante el juez de conocimiento y es cuando previamente se ha presentado el escrito de acusación.
3		3.1.- AUDIENCIA PREPARATORIA. En esta audiencia tanto el fiscal como el imputado muestran las pruebas que van a ser tenidas en cuenta durante el juicio.	3	3.1	3.1 AUDIENCIA DE FORMULACIÓN DE ACUSACIÓN. Aquí el juez traslada el escrito de acusación a la defensa del acusado. En esta audiencia el Fiscal puede corregir, ampliar o aclarar el escrito de acusación.
			3	3.2	3.2 AUDIENCIA PREPARATORIA. Aquí tanto el Fiscal como la defensa del acusado presentan todas las pruebas que deberán ser debatidas en la siguiente etapa del proceso que es el juicio oral.
3		3.2.- AUDIENCIA PÚBLICA. En la audiencia pública las partes tienen la oportunidad de presentar y desvirtuar las pruebas presentadas tanto por el Fiscal como por la defensa del imputado.	3		3.3 JUICIO ORAL. Aquí tanto el Fiscal como la defensa debaten las pruebas, las refutan, las aceptan, ante la presencia del juez de conocimiento quien no puede ausentarse en ningún momento. También se hacen los alegatos finales de las partes con el fin de que el juez dicte sentencia.
Etapa 4: Sentencia					
4		3.3.- SENTENCIA. Con base en las pruebas presentadas en el juicio el juez toma la decisión de declarar inocente o culpable al sindicado.	4		3.4 INCIDENTE DE REPARACIÓN INTEGRAL. Este incidente se puede iniciar durante el juicio o después de que el juez dicte sentencia condenatoria. Este incidente busca que la víctima del ilícito sea reparada de manera integral por parte del victimario.
4		3.4.- INCIDENTE DE REPARACIÓN INTEGRAL. Este incidente se puede iniciar durante el juicio o después de que el juez dicte sentencia condenatoria. Este incidente busca que la víctima del ilícito sea reparada de manera integral por parte del victimario.	4		3.5 SENTENCIA. Con base en las pruebas presentadas en el juicio el juez toma la decisión de declarar inocente o culpable al acusado.
4		<i>Nombres de etapas adicionales dado por la fiscalía que asignamos a esta categoría: Acción de revisión</i>			
Etapa 5: Ejecución de Penas					
		Nota: En todos los resultados jurídicos reportados, tenemos sólo 15 casos clasificados con "ejecución de penas." Todos vienen de los seccionales en 2013. Entonces, muchas veces no incluyo datos de esta etapa.			
5					Ejecución de Penas

** NOTA: De las categorías recibidas en los datos sobre CONFLICTO DE COMPETENCIA, no es claro qué tipo de conflicto es, e incluso cabe la hipótesis de que se trate de que una jurisdicción declinó la competencia en la otra, por ejemplo, la jurisdicción penal militar declina la competencia en favor de la jurisdicción penal ordinaria. Por eso el expediente debe ser transferido a la justicia ordinaria.

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