

Chapter 14

The Relationship Between Impunity and Inequality Globally and in Mexico

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14.1 Mexico in the Impunity Index

The *Global Impunity Index* (IGI; Le Clercq/Rodríguez 2015) and the *Global Impunity Index Mexico* (IGI-MEX; Le Clercq/Rodríguez 2016) have the objective to measure levels of impunity within countries and at subnational levels in the case of the thirty-two federal entities of the Mexican republic. These investigations take as their starting point the assumption that impunity is a problem that requires to be explained on its own and not solely as an indirect indicator of other phenomena such as violence, insecurity, corruption and violation of human rights. Similarly, it seeks to understand the way in which the existence of generalised conditions of impunity aggravates the effects of violence and insecurity and contributes to the erosion of citizens' trust in their institutions and authorities, as happens in the Mexican case.

Based on the definition by the *United Nations Commission on Human Rights* (UNHCR) in Diane Orentlicher's inform (UNCHR 2005: 6), we understand impunity as the

impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.

In this definition, impunity is more than the simple absence of sanction on someone who has committed crimes, it represents a juridical, political and institutional phenomenon, *de jure* or *de facto*, of multilevel and pluricausal character,

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and in that sense has an impact on the different stages of the justice processes, damages claim and the victims' protection.

From this perspective, the IGI's methodology proposes to explain and measure the scope of impunity with a set of indicators that focus on the variation of attributes in the design and functioning of the security and justice systems, as well as in the protection to human rights. The IGI 2015 analyses fifty-nine countries through fourteen indicators organised in three sub dimensions (Table 14.1), while IGI-Mex 2016 measures eighteen indicators for the thirty-two federative entities. Those countries that do not report sufficient information to compare levels of impunity are rated as cases of statistical impunity, which represents a problem on its own, since it evidences inability to produce statistics linked to the performance of public policies or the lack of will of states to report data to the international community.

IGI results warn us that Mexico stands out for having one of the worst levels of impunity (Fig. 14.1) among the fifty-nine analysed countries (Le Clercq/Rodríguez 2015). The states with lower levels of impunity are Croatia (27.5), Slovenia (28.2), Czech Republic (34.8), Montenegro (34.9), Bulgaria (37.5), Malta (38), Poland (38.2), Sweden (38.7), Lithuania (39.1) and Serbia (39.3), while the highest levels of impunity are the Philippines (80), Mexico (75.7), Colombia (75.6), Turkey (68.7), Russia (67.3), Nicaragua (65.9), Honduras (64.19), El Salvador (64.1), South Korea (63.3) and Georgia (60.3).

On the other hand, IGI-MEX (Le Clercq/Rodríguez 2016) reveals that federal entities of the Mexican Republic tend to form a cluster of very high levels of impunity, with an impunity average equivalent to 67.42 points, and the result being slightly smaller than the one corresponding to IGI 2015, 75.7, which is a consequence of the impossibility of incorporating local information regarding the situation of human rights violations. As is shown in Table 14.2, federal entities tend to group within a very short distance from each other, which means that Mexico's states have generalised and extended conditions of impunity, shared security and justice problems and a dark figure that in average sums 93 per cent.¹ Taking into account such reduced levels of variation, results are interpreted in four levels of impunity: Very High, High, Medium and Low.

From these results for the Mexican case in IGI 2015 and IGI-MEX 2016, we argue that impunity represents a generalised political pathology (Friedrich 1972) that works as a multiplier effect for insecurity, violence, unequal access to justice, corruption and human rights violation. The very high levels of impunity that characterise the case point to severe problems of political and institutional performance and lack of capabilities, since: (1) there are structural conditions of impunity that mainly affect the structure of the justice system and the functioning of the security system; (2) it is not possible to understand the scope of impunity in Mexico

¹Dark figure or 'cifra negra' means unreported crimes. As a result of the difficulties presented to access homogeneous information about the situation of human rights and the uncertainties about the record of serious violations in federal entities in 2013, IGI-MEX 2016 does not incorporate this dimension in the analysis, despite considering it a key element for understanding the magnitude of impunity in Mexico (see Le Clercq/Rodríguez 2016: 36–38).

Table 14.1 Indicators by Dimension and Transverse Axis IGI 2015/IGI-MEX 2016

Dimension/ Transverse axe	Security system	Justice system
Structural	IGI 2015 Police personnel for every 100,000 inhabitants Number of inmates compared with total penitentiary capacity Number of prison personnel compared with total penitentiary capacity Total number of prison personnel compared with total number of inmates	IGI 2015 Number of judges and magistrates for every 100,000 inhabitants
	IGI-MEX 2016 Number of attorneys for every 100,000 inhabitants Public Ministry agencies for every 100,000 inhabitants Percentages of Public Ministry Agencies for 1,000 registered crimes Judicial Police for every 100,000 inhabitants Personnel destined to the function of public security for every 100,000 inhabitants (first level, medium level and operative level)	IGI-MEX 2016 Magistrates and judges for every 100,000 inhabitants Total personnel in the High Court of Justice for every 100,000 inhabitants Secretaries in the High Court of Justice for every 100,000 inhabitants Number of penitentiary personnel compared with installed capacity Number of prison personnel compared with number of inmates
Functional	IGI 2015 Number of people against whom charges were presented in tribunals compared with number of people who had formal contact with the police	IGI 2015 Number of people against whom charges were presented in tribunals compared with number of judges Number of people imprisoned compared with number of people sentenced Percentage of people imprisoned without sentence Number of people imprisoned for homicide compared with total homicides
	IGI-MEX 2016 Alleged offences registered for every 100,000 inhabitants Percentage of people imprisoned for homicide compared with previous homicide inquiries started Percentage of people imprisoned for robbery compared with previous robbery inquiries started	IGI-MEX 2016 Penalty causes in the first instance compared with total criminal investigation folders People sentenced compared with prison admissions Percentage of inmates without sentence in the first instance
Human rights	IGI 2015 Extrajudiciary executions Torture	IGI 2015 Missing people Political prisoners
Dark figure	IGI-MEX 2016 Percentage of unreported crimes understood as a dimension of indirect impunity	

Source Le Clercq/Rodríguez (2015, 2016)

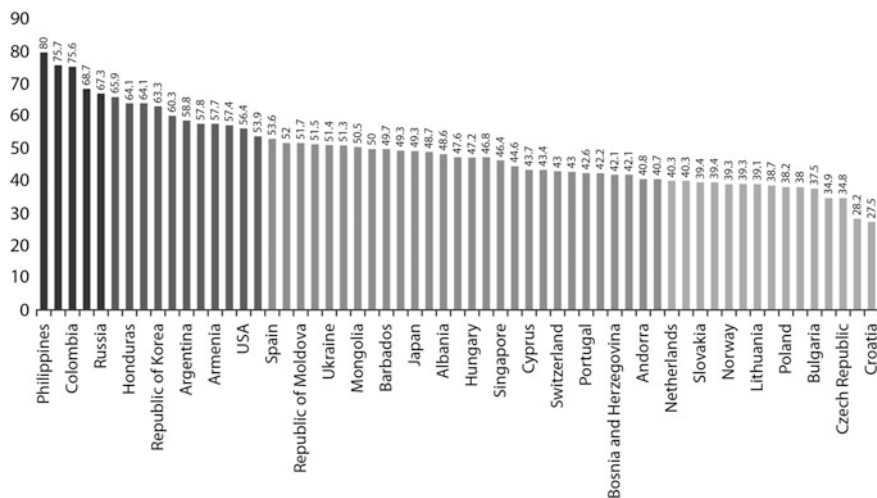


Fig. 14.1 Results IGI 2015. *Source* Le Clercq/Rodríguez (2015: 44)

without integrating the specific weight of human rights violation²; (3) the very high levels of impunity explain inefficient performance of the federal and state institutions; (4) IGI's conclusions identify a correlation between inequality and impunity, both at international level as well in the Mexican case, which warns us about the

²Recent national and international reports clearly demonstrate the importance of understanding the high levels of impunity as an element to explain the crisis of violation to human rights that Mexico faces: *United Nations Human Rights Council (UNHRC), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, 28^o sessions period, Topic 3 of the agenda, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/28/Add.3, December 29 2014. Analyse especially pp. 8, 9, 18 and 19; *Inter-American Commission on Human Rights (IACHR), Organisation of American States (OAS), Situation of Human Rights in Mexico*, December 31 2015, OAS/Ser.L/V/II, Doc. 44/15; at: <http://www.oas.org/en/iachr/reports/country.asp>, pp. 14 (Consulted 13 June, 2016); Grupo Interdisciplinario de Expertos Independientes. Ayotzinapa (GIE), *Informe Ayotzinapa I*, Mexico September 6, 2015 and *Ayotzinapa II*, México April 24, 2016, pp. 590–590; at: <http://prensagieayotzi.wix.com/gie-ayotzinapa#!informe-iclex>; United States Department of State, *México 2015 Human Rights Report*, Washington D.C.; at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, specially pp. 1, 8–9, (Consulted June 14, 2016); Open Societies Foundations, *Undeniable Atrocities, Confronting Crimes Against Humanity In Mexico*, New York 2016; at: <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-en-20160602.pdf>; International Amnesty., *Annual report 2015/2016*; at: <https://www.amnesty.org/en/countries/americas/mexico/report-mexico/> and Human Rights Watch, *World Report 2015: Mexico*; at: <https://www.hrw.org/world-report/2015/country-chapters/mexico>. For the sixth year in a row Mexico is defined as partially free by Freedom House; the report *Freedom in the World 2016* points out: 'Mexico's justice system is plagued by delays, unpredictability, and corruption, leading to pervasive impunity', <https://freedomhouse.org/report/freedom-world/2016/mexico> (14 June 2016).

Table 14.2 Groups of entities by level of impunity

Levels of impunity	Entity	Impunity index
LOW	Campeche	47.22
	Nayarit	50.42
MEDIUM	San Luis Potosí	56.86
	Sonora	58.41
	Chihuahua	59.94
	Chiapas	59.96
HIGH	Guanajuato	65.15
	Zacatecas	66
	Colima	67.01
	Nacional	67.42
	Jalisco	67.45
	Tlaxcala	67.69
	Hidalgo	67.9
	Aguascalientes	68.37
	Tabasco	69.1
	Puebla	69.19
	Sinaloa	69.34
	Morelos	69.37
	VERY HIGH	Baja California Sur
Oaxaca		71.63
Nuevo León		71.63
Querétaro		72.24
Veracruz		72.38
Yucatán		72.8
Coahuila		72.93
Guerrero		73.19
Tamaulipas		73.38
Durango		73.97
Baja California		74.92
México		76.48
ATYPICAL	Quintana Roo	76.61
	Michoacán	67.71

Source Le Clercq/Rodríguez (2016: 49)

higher levels of vulnerability suffered by people in poverty or marginalised conditions.

The former conclusion is vital to the development of the current investigation. The main questions are: (1) Do pathologies of the institutional design and the functioning of laws reproduce pre-existent social inequalities? (2) Do social inequalities produce the conditions for the inefficient performance of the rule of law, unequal access to justice and the extension of impunity among society?

14.2 Does Inequality Affect the Quality and Access to Rule of Law?

Some contemporary perspectives warn us about the relation between attributes of institutional design and levels of performance of the rule of law in contexts characterised by the existence of deep social inequalities. Oxfam (2013) has pointed out that, apart from being economically inefficient, the extreme concentration of wealth and socio-economic inequality that has tended to increase in the last thirty years is ethically unsustainable, corrodes the political fundamentals of democracy, contributes to the destruction of the environment and foments social division through social mobility, unequal access to public goods and the risks of suffering from violence.

According to Acemoglu and Robinson (2012), the existence of excluding and extractive institutions generates conditions that lead to economic failure and reproduce poverty and inequality over time, and at the same time, the conditions of social exclusion produced by the institutional design make it impossible for actors to access institutions or enjoy the benefits of development with equal opportunities.

For North et al. (2009), Natural States are capable of reproducing order and contain violence by protecting privileged interests and excluding specific groups from access to institutions and endowment of public goods. In this sense, the logic of a Natural State implies a context of socio-economic and political inequality, since the rules of the game involve high levels of arbitrariness because they came into existence to protect and reproduce the interests of the dominant coalition to the detriment of other social groups or to limit social conflict and violence through the co-optation of clientele and corporative networks.

Wilkinson and Pickett (2009), in an investigation that integrates the analysis of inequality and its social dimensions beyond economic performance, warn us that the deterioration of living standards that come from the increase of inequality gaps tends to affect societies since it deteriorates trust relations between members of society, reduces the quality of life in a community, increments levels of violence and distorts the process of access to justice.

In the same way, Stiglitz (2012, 2015) points out that the increase on inequality levels threatens democratic life and distorts access to justice, among other things. From this perspective, the extreme concentration of richness results in the possibility for certain privileged groups to have improper influence in decision-making processes, impose their interests' agenda in the law-making process and benefit from privileged treatment limited to power positions in the procurement of justice.

Using the figure of killing fields of inequality, in which inequality leads to systematic and reiterated violations to human dignity, Therborn (2013) argues that processes of social division, fractures, and polarisation end up in lethal levels of violence and crime in Africa and Latin America, where inequality and marginalisation tend to be significantly higher. Those processes are reproduced within and among countries, due to the distortion of political democracy, understood as a 'dictocracy' that imposes the interests of privileged groups on public decisions.

Finally, Enamorado et al. (2014) have demonstrated a causal relation between the increase by a point of the Gini coefficient and an increase by 10 homicides for every 100,000 habitants in Mexico between 2006 and 2010. The previous evidence is that people who are in circumstances of socio-economic inequality are also more vulnerable to the eruption of violence, crime and the general deterioration of security conditions.

We are witnessing a perverse cycle in which the distributive effects of political and economic institutions generate exclusion and inequality, and at the same time, a social context characterised by deep gaps in the access to resources and opportunities, which distorts the democratic process, transforms the meaning of the rule of law and makes it impossible to achieve processes of inclusive institutional changes. In the particular case of generalised impunity, deficiencies in institutional design and lack of capacity combined with high levels of corruption and patrimonial use of public goods produces unequal access to justice and unequal treatment from the law; but at the same time inequality produces a context conducive to distortion of the institutional framework, inadequate use of public resources, privileged access for some to rights and benefits of public life, and, in extreme circumstances, violation of human rights.

14.3 The Inequality-Impunity Correlation

One complementary finding of IGI 2015 is the existence of a positive correlation between levels of inequality and degrees of impunity. This means that those countries with a higher GINI coefficient tend to also have a higher degree of impunity. In the same way, there is a correlation between better levels of human development – measured by the Human Development Index – and lower levels of impunity, which does not happen in the case of the relation with Gross Domestic Product (Fig. 14.2). Countries in Latin America, and specially Mexico, stand out as a region that combines high levels of impunity and inequality (Le Clercq et al. 2016).

This relation of high impunity-high inequality is replicated in Mexican federal entities (Fig. 14.2). Because in this case both impunity and inequality tend to be very high, it is more useful to analyse these situations based on quadrants that make it possible to distinguish a state's performance related to national average levels of impunity (67.42) and inequality (0.4979). In this case we conclude that nine entities belong to the quadrant 'entities above the mean of national impunity and above the national GINI index'.

Nevertheless, the State's position by quadrant reflects that Fig. 14.3 tends to distort the magnitude of the correlation, in the first place because averages of national impunity and inequality are very high *per se*; and in the second place, because an additional group of thirteen states that are located in other quadrants tend to gravitate very close to the average. The dotted line reflects this situation by integrating to the set those states that have high or very high levels of impunity, according to IGI-MEX 2016 or that have a GINI index superior to 0.46.

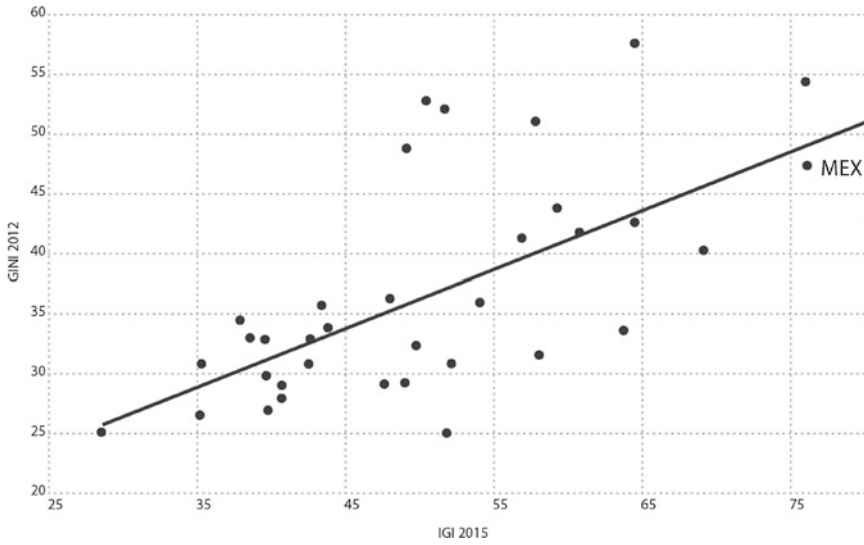


Fig. 14.2 Correlation inequality-impunity. Source Le Clercq/Rodríguez (2015: 49)

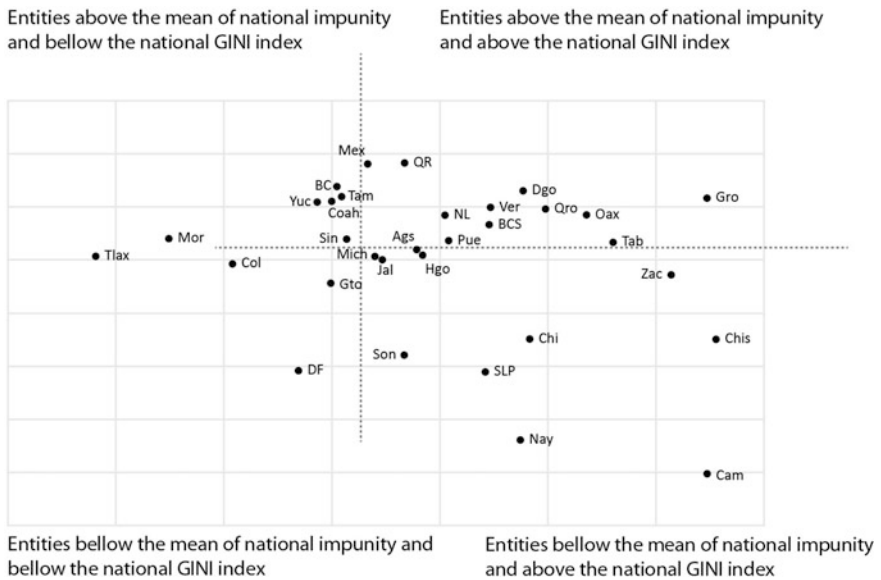


Fig. 14.3 Quadrant of impunity in Mexican states. Source Le Clercq/Rodríguez (2016: 59)

The situation of the Mexican case demonstrates the coexistence of high levels of impunity that coincide with high levels of inequality at national level and within federal entities. This means that, firstly, even if this has not resulted in the same levels of violence or unsafety in all cases, the conditions for exogenous factors to lead to the detriment of criminal incidence and violence exist; secondly, inequality allows the reproduction of a generalised impunity context that affects society as a whole and increases the vulnerability of groups that suffer from marginalisation and poverty.

Why is it relevant to understand the relationship between inequality and impunity? In general terms, inequality does not only represent a problem of inefficient economic performance, it also implies a process of social segregation that produces first and second class citizens because of an unequal endowment of public goods and access to institutions. This means:

1. People who are in conditions of socio-economic marginalisation have more difficulty defending their rights through institutional means.
2. People who suffer from inequality have less access to quality public goods, including conditions of security and access to justice.
3. People who benefit from a socially privileged position get preferential treatment in the endowment of public goods and by institutions, particularly in the case of access to justice.
4. Corruption punishes all citizens; nevertheless, it imposes additional life costs on those who have lower levels of income or are in conditions of poverty and marginalisation.
5. Inequality restricts the participation of institutional benefits to people who are in previous conditions of vulnerability due to their economic situation.
6. High levels of inequality and lack of opportunities to access development and public goods facilitate the co-optation and recruitment of people in situations of marginalisation, especially young people, to criminal organisations.
7. Institutional exclusion and the distributive effects of unequal decision-making tend to be reproduced through political processes.

14.4 Conclusion: Impunity as a Complex

Impunity is a social phenomenon, a pathology of public life that goes beyond the simple reference to crimes that don't receive a legal sanction. In cases in which impunity represents a generalised problem it is possible to identify a complex framework of social and institutional relationships that take the form of interaction and feedback between social traps (Fig. 14.4). A 'social trap' is understood as a situation in which social actors, despite identifying superior levels of performance, cannot generate the necessary cooperation or achieve institutional change or are incapable of reaching more efficient, effective or just social results (Rothstein 2005).

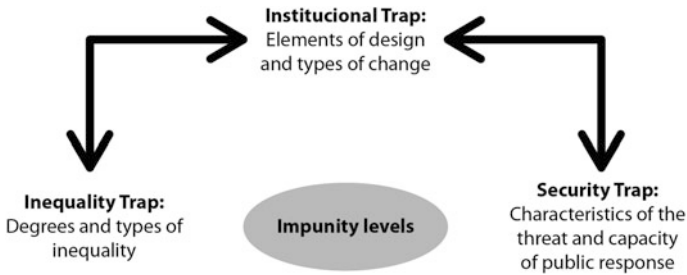


Fig. 14.4 Impunity as a complex. *Source* Author

The impunity complex involves the interaction of three specific types of social trap:

- (1) Institutional trap: (a) deficient or insufficient institutional capacities to guarantee security, access to justice and protection of human rights; (b) inexistence of effective accountability, transparency and access to information and prosecution of corruption mechanisms; (c) imbalance in institutional design and attributes, as well as in the implementation of law at national and local levels; (d) deficient institutional reconfiguration and reform, processes that reaffirm exclusion or reproduce path dependency processes.
- (2) Inequality trap: (a) dimension of illicit markets and capacities of criminal organisations; (b) characteristics and capacities of security forces; (c) influence of corruption, collusion and violations to human rights.
- (3) Inequality trap: (a) poverty levels, socio-economic inequality and discrimination; (b) vulnerability of people who suffer from violence or threats to their security as a result of their economic situation; (c) levels of political, economic and social informality, recognised in the existence of institutional exclusion, clientelism or economic informality.

What is relevant for understanding impunity as a complex is that, in the first place, the existence of deep social inequalities establishes the context that leads to the erosion of the rule of law and generalised impunity. In the second place, once that generalised impunity exists, it potentiates the vulnerability of those who suffer from conditions of marginalisation and poverty. Finally, impunity represents a complex of institutional and social relations that is maintained by insecurity, flawed institutional designs and socio-economic inequality. Facing inequality implies an agenda of institutional policy change that involves redesigning justice and security systems, protecting human rights, and public programmes that reconstruct the social network through redistributive policies and equal opportunities.

Dworkin (2000) pointed out that the legitimacy of a government depends on treating all citizens with equal consideration with the respect to their human rights and access to public goods and resources, and that this consideration does not exist when richness is distributed in a profoundly unequal way within a country. The discussion about the relationship between inequality and impunity is extremely

relevant, especially in cases such as the Mexican in which both are extremely high, since it points out that socio-economic conditions, not only the particularities of a legal framework, are important to guarantee the regularity of justice that Rawls (1971) understood as defining criteria of a democratic affirmation of law's empire.

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