

Legal mobilisation as a societal response to violence

Lessons from Michoacán

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Key messages

- This ODI Briefing Paper explores how local organisations and associations have used legal mobilisation strategies to counter extreme violence in the state of Michoacán in Mexico, with a particular focus on three vulnerable groups: families of victims of forced disappearances; victims of sexual and gender-based violence; and sex workers.
- All three groups have used various means of legal mobilisation to seek justice, protect their interests and reduce their vulnerability. While these efforts have secured some notable achievements, they have also faced substantial challenges and limitations.
- International efforts to support legal mobilisation by vulnerable groups in contexts of extreme violence should invest in greater cross-fertilisation of evidence on societal responses to violence in both crime- and conflict-related settings. Context-specific histories of violence need to be fully understood in order to identify where and how efforts to support survivors of different forms of violence can be best directed.
- Including gendered experiences of violence sheds light on often invisible forms of violence that are shrouded in silence or go unreported. Power asymmetries shape vulnerabilities to different forms of violence, intersecting in complex ways across class, ethnicity and ideology.
- It is important to be realistic about what can be achieved through legal mobilisation, and what is politically possible given prevailing power asymmetries and interests.



Introduction

Sustainable Development Goal 16 (SDG 16) is a call to action to ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’. SDG 16 thus involves securing political commitment to support better access to justice and accountable and inclusive institutions, where conflicts and disputes are peacefully resolved in ways that enable sustainable political, social and economic development.

In reality, any substantive progress on SDG 16 involves engaging with the messiness and complexities of crime and conflict-related violence, how societies experience this, and the options for individual and collective agency to contest and change the power dynamics underpinning severe forms of violence. At issue is, first, the question of what is politically and institutionally possible in terms of rights protection, justice, and basic safety provision. The second challenge for policy and practice concerns where best to target funding and other support to protect the rights and safety of vulnerable groups in contexts affected by violence, and the criminal and political capture of state and law-enforcement agencies.

This paper draws on research on societal responses to crime-related violence in Michoacán to derive insights and lessons from concrete examples of recourse to legal mobilisation strategies in one of the most violent regions of the world.¹ By legal mobilisation strategies we mean strategic appropriations of the law, tactical strategies to push for legal and normative change, and judicial action to address different forms of vulnerability, violence and rights violations (Domingo, 2010; Huneus, Couso and Sieder, 2010). Legal mobilisation is in many cases not a priority tactic, but sometimes a necessary one. The research in Michoacán has focused on how civil society and grassroots organisations have tactically combined legal mobilisation with

advocacy, awareness-raising, social and political mobilisation, and the use of public space to advance their objectives. The focus here is on the experiences of Michoacán-based organisations and associations facing very diverse forms of vulnerability to violence. These include efforts to pursue some form of justice in relation to forced disappearances; gender-based violence (GBV), with a focus on violence against women and girls (VAWG); and specific vulnerabilities to violence and physical abuse encountered by sex workers. All three cases highlight the dramatic levels of violence in Michoacán, in a context of drug-trafficking and other crime-related violence.

Key features of violence in Michoacán

Violence in Michoacán includes forced disappearances, kidnapping, torture and sexual violence. Protection from violence, safety and access to justice is unattainable for most victims, and impunity and complicity between perpetrators of violence and state officials is common. Violence is embedded in wider legacies of political and institutional upheaval and revolution, and in the wider political economy of Mexico’s development model, with disputes and grievances relating to mining and land grabs for avocado cultivation. This in turn interacts with illicit economies including drug-trafficking and related criminal activities, creating unique patterns of interconnection between organised crime and the capture and penetration of political power, justice and security mechanisms at the state level (Maldonado, 2018; Gledhill, 2017). Social bonds and social cohesion are fracturing at the community level, exacerbating the sense of isolation and vulnerability of victims. There is a consistent culture of blaming victims of forced disappearances, GBV and violence towards sex workers, silencing victims and rendering their experience of violence invisible. Rape, for instance, stigmatises the survivor, and cases are mostly not addressed.

1 This ODI Briefing Paper draws on findings from the research project ‘Assessing the potential of civil organisations within regions affected by organized crime to hold state institutions to human rights-based development’ (University of Aberdeen, Colegio de Michoacán, CIDE-Aguascalientes and ODI). The project reviews societal responses to violence in contexts of organised crime and institutional fragility. The author would like to thank Lisa Denney, Rachel Sieder and Lars Waldorf for their review and comments of an earlier draft of this paper.

Stories of change: legal mobilisation in response to violence

Against this background, the three groups looked at here (relatives of victims of forced disappearances, GBV survivors and sex workers) have resorted to various forms of legal mobilisation aimed at seeking redress, protection, or recognition of past and ongoing vulnerability to and experiences of violence. Such strategies are the expression of both individual and collective agency, sometimes conducted as one of multiple strategies, and often as acts and processes driven by desperation rather than high hopes of success.

1. Family members of victims of forced disappearances

Michoacán has a long history of forced disappearances. These include disappearances resulting from older cycles of political violence aimed at silencing opposition and more recent instances at the hands of organised crime or in relation to disputes over land and other issues. State justice and security or governance officials are complicit to varying degrees.

Family members of victims of forced disappearances in Michoacán used various means of legal mobilisation, including engaging with security bodies, sometimes resulting in the activation of investigative processes, persevering with judicial investigations, establishing networks across local associations of families of victims at the state level, and with national level non-government organisations (NGOs) and human rights organisations, and working with initiatives aimed at altering the legal status of missing persons, and related investigative procedures.

Mobilisation efforts vary in their organisational sophistication, ranging from more structured endeavours grounded in the transitional justice experiences of Latin America to more family-based and less organised efforts to find missing daughters, sons, wives, husbands or parents. However, they share similar objectives. First and foremost, they are driven by the need to find disappeared relatives, hopefully alive, but if not at least to locate the body of the victim. Second, there is an aspiration to achieve some form of justice by establishing official recognition through judicial processes

of the violence committed, and accountability for the perpetrators. Third, there is a desire to give visibility to the injustice and denounce the ineffectiveness of government, judicial and law enforcement authorities.

Relatives of victims of forced disappearances seek redress and the establishment of the truth, but generally with low expectations of success. They also encounter multiple obstacles, ranging from stigmatisation to deliberate obfuscation tactics by law enforcement officials involved in investigative and judicial procedures. The effect of system-wide complicity, combined with basic capability gaps in justice and security provision, is to silence families, and in practice mobilisation efforts have had to work clandestinely, including to address risks of reprisals and heightened vulnerabilities for family members.

Achievements include:

- Greater visibility and recognition of otherwise ‘hidden’ crimes of forced disappearances.
- Greater public awareness of disappearances, in terms of their violence and scale.
- Denunciation of state authorities and justice and security providers, contributing to pressure for change.
- Increased opportunities to share experiences among the families of missing people.

2. Organisations addressing GBV and VAWG

Levels of femicide and forced disappearances among women in Michoacán are extremely high. The gendered experience of crime-related violence results in particular patterns of vulnerability among women and girls to femicide and inter-personal violence. This is connected to deep-rooted gender inequalities and discriminatory social norms. A large number of organisations in Michoacán are working to address various forms of GBV and VAWG through relatively well-established legal and other mobilisation strategies. Recourse to different forms of engagement with legal change, judicial investigations, protection of survivors and accompaniment in reporting processes constitute key elements of these legal mobilisation efforts.

Legal mobilisation strategies include providing safety and shelter to survivors and vulnerable

women; accompanying survivors of GBV; investing in independent reporting capabilities and systems and data management of femicide and intimate partner violence; monitoring and tracking case progression through the justice system; support to legal change processes, including through political lobbying and awareness-raising, and supporting capacity development in the justice chain to improve the capabilities of prosecution, justice and law enforcement bodies; and supporting legal changes to explicitly recognise and distinguish between various forms of GBV and establish corresponding punitive measures against perpetrators.

Shared objectives across these organisations include to transform social norms that sustain and reproduce practices of GBV, and beliefs about their acceptability; to end impunity, both of perpetrators and of complicit security and justice officials; to improve the quality of protection and justice for survivors, and their overall experience of an otherwise hostile system, including through direct forms of protection to women at risk; and accompaniment of survivors of violence.

These efforts face similar challenges and limitations to those encountered by relatives of victims of forced disappearances. There is seemingly less deliberate obfuscation of case management in relation to VAWG, but the resilience of social norms that militate against taking VAWG seriously is a sticky problem, exacerbated by a culture of masculinity within organised crime groups that is highly permissive of VAWG.

Achievements include:

- Raised awareness and visibility of the high levels of femicide in Michoacán, contributing to a public discourse on this as a chronic failure to protect women's rights.
- These organisations have established an ongoing dialogue with local government over registering victims of GBV, including femicide, and the wider structural drivers of GBV, contributing to, for instance, the incorporation of the Declaration of the Gender Violence Alert in the 'Law on Women's Access to a Life Free of Violence' of 2007. These emergency government measures can be activated through individual or collective action to address situations of femicide.

- Engagement in legal reform has helped address regressive trends towards, for instance, attempts to criminalise abortion, changes to the Michoacán Penal Code to reclassify femicide as an aggravated felony, from a lesser category of offence, and harsher penalties for perpetrators.

3. Legal empowerment of sex workers

Sex workers in Michoacán are highly vulnerable to extortion, arbitrary detention by the police and violence at the hands of both clients and the police. These risks are exacerbated by the working hours they keep, the work itself and prevailing social norms around their work. Their social and labour rights are unrecognised, rendering them even less secure.

Sex workers have been organised for almost 15 years. Their legal mobilisation strategies call on discourses of human rights and the direct use of professional legal representation and advice. Their objectives focus on gaining legal recognition of their status as workers, and thus their entitlement to social benefits; securing safety from extortion and protection from police and client violence; and ending arbitrary arrests. Their claims are thus also a matter of labour rights.

Achievements have been modest but concrete, including securing legal identity as an association of workers. This has enabled the association to become a recognised interlocutor with the police, alongside enhanced access to social services, such as food provisions from the Morelia City Council.

Gains, enablers and the limits of legal mobilisation

Gains

In a context of institutional and structural violence, absence of rule of law, and entrenched impunity, substantive advances in rights protection, accountability and violence reduction are highly unlikely. Nonetheless, experiences of legal mobilisation strategies in Michoacán hold important lessons about how modest but important achievements are possible in the face of adversity and extreme forms of violence. These are equally relevant for settings affected by conflict and by high levels of violent crime.

1. There has been progress in raising the visibility of specific experiences of violence, as well as of the wider scale of violence, impunity and complicity.
 2. Where there are deliberate efforts to deny incidents of violence, achieving any recognition of the incidence of violence and of the plight of survivors in their dialogue with state bureaucracies or justice and security officials may in itself constitute empowerment. Legal mobilisation helps to give substance to the exercise of at least some form of legal voice.
 3. Greater visibility of cultures of impunity may create reputational challenges for government and state officials. This may help establish constraints and checks on the exercise of public office, even in the absence of institutional guarantees and commitments to address violence and access to justice.
 4. Concrete changes in the rules of the game contribute to a reframing of social narratives of violence, injustice and discrimination and help expose impunity that would otherwise go unquestioned. Improved recording of forced disappearances, the Declaration of the Gender Violence Alert, improved monitoring of femicide and greater awareness of GBV, and steps to prevent arbitrary arrest and extortion of sex workers constitute piecemeal but meaningful progress.
 5. These achievements in turn open up channels of communication with state bureaucracies that were previously closed, creating in some cases opportunities for dialogue, negotiation and contestation of practices that undermine access to justice.
- Legal mobilisation is effective when underpinned by politically strategic modes of engagement with power structures. This includes the capacity to deploy tactical approaches to lobbying and negotiating with power-brokers, identifying champions of change, and developing strategic coalitions, networks and partnerships. This requires deep knowledge of the personalities and interests of political players in a given context.
 - Tactical recourse to human rights discourse by grassroots organisations, including through strategic alliances with regional, national and international networks, can help challenge prevailing social norms that reproduce stigmatisation, social exclusion and discrimination, and perpetuate violence and vulnerability.
 - Technical knowledge matters. This includes having an understanding, not just of formal law and procedural mechanisms, but also of the informal rules governing the complex layers of bureaucracy, and the skills to navigate these and negotiate outcomes. This is important precisely because efforts to protect impunity are especially adept in the use of bureaucratic obfuscation and obstruction. Knowledge of different forms of data collection and analysis contributes to the empowering potential of legal mobilisation strategies.

Key skills and capabilities

These gains cannot be explained through the lens of normative approaches to advancing formal legal change, or awareness-raising around formal rights and entitlements. Rather, the effectiveness of legal mobilisation strategies relies on the degree to which they are anchored in a diverse range of skills and capabilities, and how they use the opportunities the specific context presents.

The limits of legal mobilisation

In practice, it is important to keep expectations of what can be achieved through legal mobilisation in check, and within what is politically possible given the prevailing power asymmetries and interests in place. The limitations noted here reflect these structural barriers to change through bottom-up legal voice and agency. Other limitations have to do with international organisational constraints.

- A key challenge lies in the fragmentation of interests between the social actors studied, despite them facing similar levels of violence. This limits their capacity to make effective use of legal mobilisation strategies.

- Insufficient resources, time and expertise undermine the prospects for sustained and effective legal activism.
- Change is uneven and susceptible to reversals, and cumulative progress cannot be assumed. Rather, pervasive cultures of impunity and associated interest structures reduce the scope for denunciation to fundamentally alter incentives or change behaviour.
- Finally, progress in legal voice, political skills or technical knowledge by the organisations in question risks triggering new obstruction tactics and bureaucratic entanglements in the justice chain. These need to be foreseen and pre-empted.

Recommendations

As the global community makes the case for taking seriously ‘people-centred’ approaches to addressing violence, relating both to conflict and criminal activity, there is a need to build the evidence base on the role of legal mobilisation strategies, and their merits and limitations as one of many other recourses that victims, survivors, and vulnerable groups and communities can turn to.² Knowledge remains siloed across contexts of conflict and crime-related violence, though how societies experience violence across the two is similar, and the political economies and legacies of conflict and crime are deeply interconnected.

This study of Michoacán provides evidence to inform international efforts to support strengthening societal capabilities in the face of extreme forms of violence.

- Support should aim at bolstering organisational strengths and the strategic capabilities of existing, organic responses to crime-related violence, rather than creating new NGOs or

civil society organisations, grounding efforts in deep knowledge of local political economies of violence.

- Efforts to strengthen the security and safety of vulnerable groups and individuals can take several forms, including:
 - Providing basic accompaniment and recognition, including through strategic international platforms and lobbying, to maximise the visibility of violence, risk and vulnerability, and the provision of protection.
 - Facilitating and supporting strategic networks across grassroots organisations and civil society networks and working across subnational, urban/rural and national lines. This includes giving the space for grassroots organisations and affected populations to set priorities and agendas in ways that accommodate diversity, while also incentivising shared goals and common strategies in countering violence and state capture and complicity.
 - Facilitating, as far as possible, strategic coalitions with reform champions at different levels of the state, law enforcement and legal change bodies.
 - Prioritising ongoing monitoring of (often rapidly changing) conditions of violence and vulnerability to ensure that interventions do no harm, and reduce risks of reprisals and backlashes.
 - Support should enable locally grounded capabilities and agendas, not suffocate legal mobilisation work through top-down, preset solution-based responses.
- Support should be given to locally produced knowledge and documentation of experiences. This remains a major weakness in international efforts to support legal mobilisation, which remain top-down and overly normative.

² Task Force on Justice, Justice for All – Final Report (New York: Center on International Cooperation, 2019) (<https://www.justice.sdg16.plus/>)

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