

# MILITARIZATION AND PUBLIC SAFETY

Another failed surgery

# MILITARIZATION AND PUBLIC SAFETY

## SYNTHESIS

Since 2007, Public insecurity in Mexico has steadily grown. The security strategy introduced in Felipe Calderón's government was maintained and reproduced during the administration of Enrique Peña Nieto and, although the current administration promised to end it and at the same time end with the serious situation of insecurity in the country until now the National Strategy for Public Safety of the Government of Mexico has not improved this situation. Although most of the recommendations from experts and international organizations are aimed at gradually demilitarizing public safety, government decisions seem to do the opposite. An example of this is the agreement issued by the President of the Republic on the National Guard in which the Armed Forces are available permanently to carry out public security

tasks for the remainder of the sexennium. This decision is made amid an increase in crime incidences where the homicide numbers are particularly disturbing.

Public insecurity in Mexico has been the uppermost concern for citizens during the past thirteen years. Despite the security strategy implemented by the current government, violence remains at disturbing levels. In response to the critical situation of insecurity that the federal government inherited from the last sexennium, on May 16, 2019, the Senate of the Republic approved the National Security Strategy of the Government of Mexico, which contemplated three fundamental actions to face the problem of insecurity.<sup>1</sup>

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<sup>1</sup> Official Journal of Federation (DOF). Act approved by the National Security Strategy of the Government of Mexico. Available at: <https://tinyurl.com/y7ru943g>

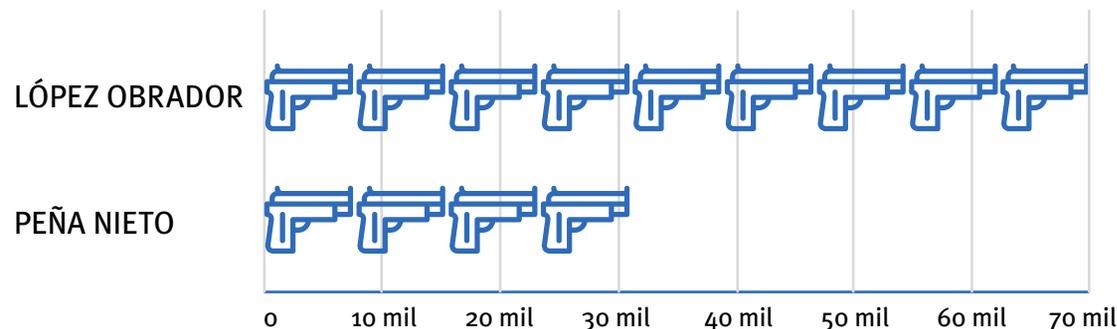
The first consists of strengthening the local and municipal police, the second to create a civilian National Guard capable of responding promptly to the country's demands and, lastly, using the armed forces in a subsidiary and momentary manner while the National Guard is being established. In regards to this, the strategy contemplates, on the one hand, strengthening corporations at sub-national levels and, on the other, institutionalizing a national corporation.

Despite this, the situation has not improved. Through December 2018, the month in which López Obrador assumed the presidency, and March 2020, 69,554 homicides have been registered, more than double of those registered during the first 16 months of Enrique Peña Nieto's term when 30,085 homicides were reported.<sup>2</sup> At this rate, the administration of the Fourth Transformation (4T) could become the sexennium with the most murders in the country's history since records have become available. This reality deserves a more consistent evaluation from the National Security Strategy's three actions.

<sup>2</sup> Since the Executive Secretariat of the National Defense and Security System (SESNSP) began to provide data after 2015, the figure for homicides recorded between December 2012 and March 2014 was obtained from the National Institute of Statistics and Geography (INEGI).

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NUMBER OF HOMICIDES DURING THE FIRST 16 MONTHS OF EACH GOVERNMENT



Source: In-house product with information from SESNSP and INEGI

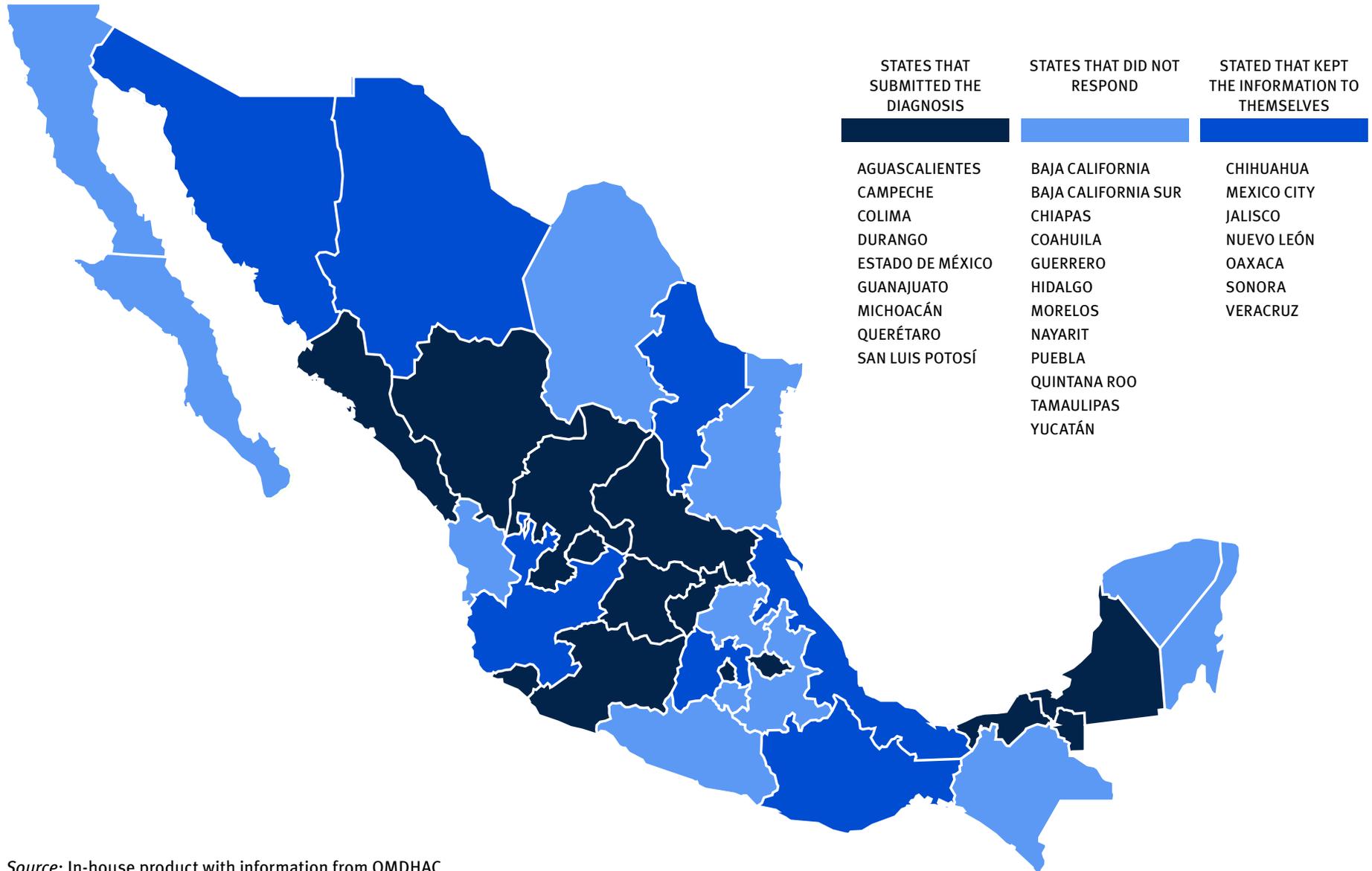
Firstly, although the seventh transitory act by which the National Guard was created compels entities to present a diagnosis of the state kept by the corresponding police corporations, it is not clear that these have been presented. Although the head of the Secretariat of Security and Civilian Protection, throughout agreement 05/XLV/19, assured that the 32 entities have presented said diagnosis, as well as the programs of the federal entities for the strengthening of the state of force and the institutional capacities of their respective state and municipal<sup>3</sup> police bodies, none of these documents are of public record, and in fact, the Mexican Observatory of Human Rights, AC (OMDHAC by its acronym in Spanish) reported that thanks to requests for information made through the national transparency platform, it could only be guaranteed that 13 states have submitted the documents, while 12 did not respond and 7 kept the information to themselves. Concerning this, it is uncertain to know if the local police have the adequate conditions that allow them to improve their performance and if they will be able to achieve the established standards that, by the way, are not of public record either. Concerning the creation of the

National Guard, various questions have been raised about its civilian character. Although the National Guard Law claims that it will be a civilian who leads the corporation, yet the orders seem to come from other places. This is no surprise since it is known that the recruitment and creation of bases for the National Guard are carried out by the Armed Forces. Besides, since the publication of the act of June 28, 2019, that gives rise to the National Guard, it was contemplated that from the beginning the institution would be made up of members of the Federal Police, the Military Police, and the Navy Police.

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<sup>3</sup> Government of Mexico. The 32 entities of the country comply with their diagnoses and programs to strengthen their police force. (September 27, 2019) Available at:<https://tinyurl.com/ybdzoa4g>

## CLASSIFICATION OF STATES THAT COMPLIED WITH THE 7TH TRANSITORY ACT OF THE NATIONAL GUARD



Source: In-house product with information from OMDHAC

Once again, the Human Rights Mexican Observatory AC (OMDHAC for its acronym in Spanish), through requests made for information, reported that 51,249 registered guards come from the Mexican Secretariat of National Defense (SEDENA for its acronym in Spanish) and 10,306 from the Mexican Secretariat of the Navy (SEMAR for its acronym in Spanish). Besides, 54,314 military personnel continue to perform public security tasks, as well as 1,600 sailors.<sup>4</sup>

It is worth mentioning that the constitutional reform in the matter of the National Guard gave rise to various laws that were controversial through four lawsuits for unconstitutional action, promoted by the National Human Rights Commission,<sup>5</sup> which were presented and accepted by the Nations Supreme Court of

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<sup>4</sup> OMDH. What about the demilitarization? (¿Y la desmilitarización?) (April 2020). Available from: <https://tinyurl.com/y9savh5s>

<sup>5</sup> CNDH. Lawsuit of unconstitutional action 62/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/y96efyor>;

CNDH. Lawsuit of unconstitutional action 63/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/ybyv3z3t>;

CNDH. Lawsuit of unconstitutional action 64/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/ya88tmc7>;

CNDH. Lawsuit of unconstitutional action 66/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/ybez3txl>

## The National Guard gave rise to various laws that were controversial through four lawsuits for unconstitutional action, promoted by the National Human Rights Commission, which were presented and accepted by the SCJN on 26 June 2019.

Justice (SCJN for its acronym in Spanish) on 26 June 2019. The guarantor agency for Human Rights in the country argued that the General Law of the National System of Public Security, the National Guard Law, the National Law on the Use of Force and the National Law of the Registry of Detentions, together, infringe upon at least 25 fundamental rights, and violate various constitutional and conventional provisions framed in the American Convention on Human Rights, the International Agreement on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and the International Convention for the Protection of all Persons against Enforced Disappearances.



Image: [www.reporteindigo.com](http://www.reporteindigo.com)

The controversial laws empower the National Guard, among other things, to carry out crime prevention investigations, carry out verification tasks to prevent administrative infringement, request the geo-referencing of mobile equipment, request the intervention of communications, collect information in public places, request and demand information from authorities and individuals, analyze and process information,<sup>6</sup> use weapons against those who participate in rallies or public meetings that are classified, without clear grounds by the authority, as non-peaceful or lacking in lawful purpose. Also, entities responsible for ensuring public security are allowed to use all levels of law enforcement, including the use of firearms and the use of lethal force in cases where, the judgment of the executors of the force, the rallies are violent.<sup>7</sup> Likewise, the Armed Force is authorized to carry out and record arrests.<sup>8</sup>

Almost a year after the filing of these unconstitutional actions, the Court has not ruled on 3 actions and only decided to dismiss, on March 2, 2020, action

6 CNDH. Lawsuit of unconstitutional action 62/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/y96efyor>

7 CNDH. Lawsuit of unconstitutional action 64/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/ya88tmc7>

8 CNDH. Lawsuit of unconstitutional action 63/2019, Provided by National Human Rights Commission (June 26th, 2019). Available at: <https://tinyurl.com/ybyv3z3t>

## Almost a year after the filing of these unconstitutional actions, the Court has not ruled.

66/2019, relating to Article 110 of the General Law of the National Public Security System, reformed on May 27, 2019, which in the opinion of the CNDH violates both the right of access to public records and the principle of maximum official publicity, by specifically prohibiting the public from accessing the database from the National Information System and the National Registries regarding arrests, criminal information, public security personnel, personnel and equipment of the private security services, weapons and equipment, vehicles, fingerprints, cell phones, precautionary measures, alternate solutions and documents of early termination and those sentenced, among other things. The CNDH considered that this decision violates Articles 1 and 6 of the Constitution of Mexico, Articles 1, 2 and 13 of the American Convention on Human Rights, and Articles 2 and 19 of the International Agreement on Civil and Political Rights. Thus, the National Supreme Court of Justice still has three lawsuits for unconstitutional action on the issue of the National Guard.

The apparent weakness in the execution of the first two actions of the strategy makes the third, the action of the armed forces, become the foundation of it. The fact that the government has chosen to lean more towards the militarization of public security has set off various warnings, since their participation is not entirely clear, according to many specialists, it could be unconstitutional and most importantly, it has not changed the negative trend of the security of the country. Until now, the incidences of crime have worsened and it is possible that, for this reason, on May 11, 2020, the head of the federal executive issued a presidential agreement<sup>9</sup> that makes it possible to have the permanent Armed Forces (FFAA for its acronym in Spanish) carry out tasks of public security in an extraordinary, regulated, supervised, subordinate and complementary manner to the National Guard, although the same agreement does not clarify how each of these principles is guaranteed. All this, for five years that will end on March 27, 2024.

<sup>9</sup> Official Journal of Federation (DOF). Agreement by which the permanent Armed Forces are available to carry out public security tasks in an extraordinary, regulated, supervised, subordinate and complementary manner (May 11, 2020). Available at: <https://tinyurl.com/yc334yx9>

In the Álvaro Espinoza et al. verdict against Mexico made by the Inter-American Court of Human Rights on November 28, 2018, the principles to which the actions of the permanent armed forces must be subjected are clearly defined.



*Image:* National Guard making police activities.

Foto de Juan Carlos Cruz. Cuartoscuro.com en Mananerodiario.com

By extraordinary it is understood that the actions of the armed forces will be fully justified and defined temporarily and geographically; by subordinate and complementary, it is understood that the participation of the armed forces will depend on orders from a civilian command, which in this case is the Secretariat of Security and Civilian Protection; regulated means that the use of force will be delimited by-laws and protocols that are subordinated to the principles of exceptionality, proportionality, and of absolute necessity, and, finally, the investigation refers to the supervision of the Armed Forces during their actions. Public security will be in charge of competent, independent, and technically capable personnel.

Because the presidential agreement does not mention how the army and the navy will abide by these principles, there is a consensus between specialists regarding its unconstitutionality. The Armed Forces' permanent participation is not extraordinary because it does not delimit the geographical space in which it will perform, but instead units will be deployed throughout the national territory without knowing the criteria for doing so. It is not regulated because the only authority empowered to regulate the actions of the Armed Forces is the Congress of the Union through regulatory laws, which have not

been issued. It is also not audited because the ones controlling will be the Armed Forces themselves and, finally, it is also not subordinated to the civilian force because the group that coordinates the security tasks created is made up of the Secretary of Defense, the Secretary of the Navy, the commander of the National Guard, who is a retired military man and the Secretary of Security. In other words, decisions will be made between three soldiers and one civilian.

Furthermore, although the armed forces have, by deed, carried out public security tasks since 2007 and the 2019 constitutional reform enabled the President to occupy the army and the navy in public security tasks, the presidential act institutionalized their participation in responsibilities originating from the police and the National Guard.<sup>10</sup>

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<sup>10</sup> Official Journal of Federation (DOF). Act by which various provisions of the Constitution of Mexico are reformed, added and abolished regarding the National Guard (March 26, 2019). Available at: <https://tinyurl.com/yc7q9qd3>

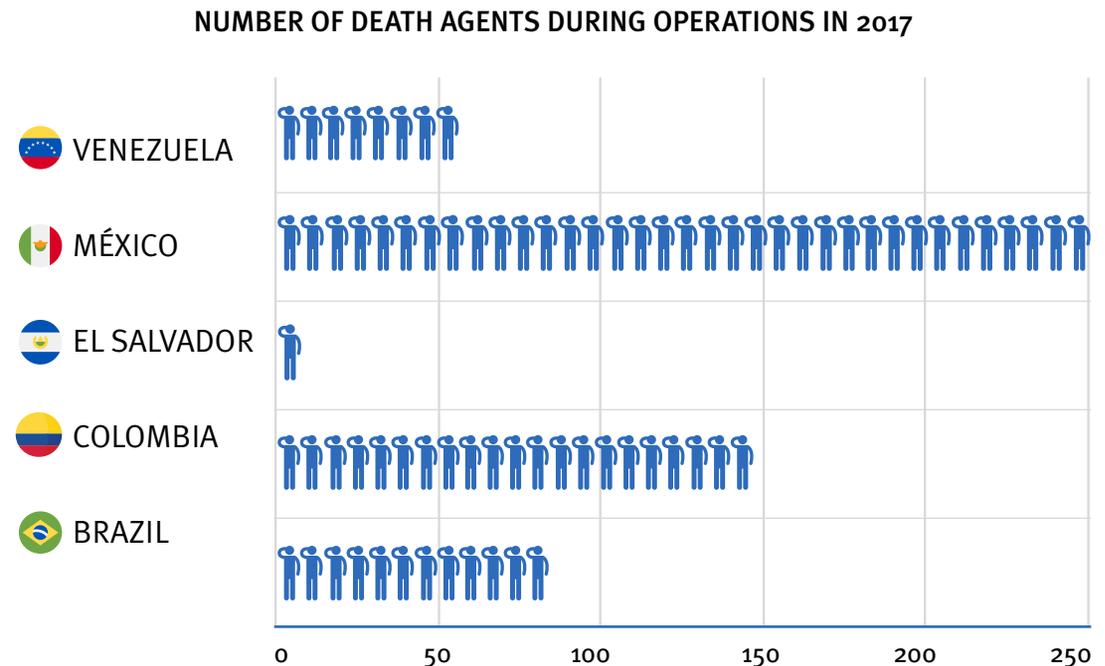
This, in a context characterized by the abuse of authority and the excessive use of force by the agents who participate in interventions related to public security. In 2017 alone, the report “Monitor of Use of Lethal Force in Latin America” recorded 371 civilians killed in security interventions, of which 91% were in specific interventions by SEDENA and SEMAR.

It should be noted that, among the countries studied in Latin America,

**only Mexico presented a serious lack of public information regarding the deaths of civilians by public security agents,**

so most of the information used in Organized Civil Society comes from journalistic sources. This phenomenon by itself constitutes an indicator that alerts us to the danger of not having reliable data regarding the actions of the Armed Forces in tasks related to public security. It is worth remembering that, despite the multiple requests for information made to know the data on civilians killed and wounded in interventions carried out by the army, SEDENA has refused to share this information.

**In 2017 alone, of the 536 murdered officers registered in the five countries studied, 251 were Mexicans.**



Source: In-house product with information from “Monitor the use of Lethal Force in Latin America”

Another consequence of the inappropriate use of the Armed Forces in public security tasks is the level of deaths of security agents during interventions. In comparative terms, Mexico has the highest number of agents killed during operations among the countries studied in Latin America. While in Brazil the rate of dead agents for every 100,000 agents is 0.1 and in Colombia 0.3, in Mexico it reaches 0.5. In 2017 alone, of the 536 murdered officers registered in the five countries studied, 251 were Mexicans.<sup>11</sup>

The presidential agreement occurs in a context of generalized crisis and intensified by the pandemic. The López Obrador government indeed inherited a difficult security situation, but this reality has worsened throughout the first 17 months of the current government, so resorting to the army and navy at this time, could expose the failure that the National Security Strategy has represented so far. Proof of this is the indicator of violence that reveals the continuous increases in high-impact and patrimonial crimes.

When the first quarter of 2020 is compared with that of 2019, an increase in crimes by intentional homicide is observed in absolute terms. The records for this crime show that between January and April 2019 they reached 11,587 in figures, while in the same period of 2020 they extended to 11,849. The homicide rate per 100,000 inhabitants went from 28.3 to 28.6.

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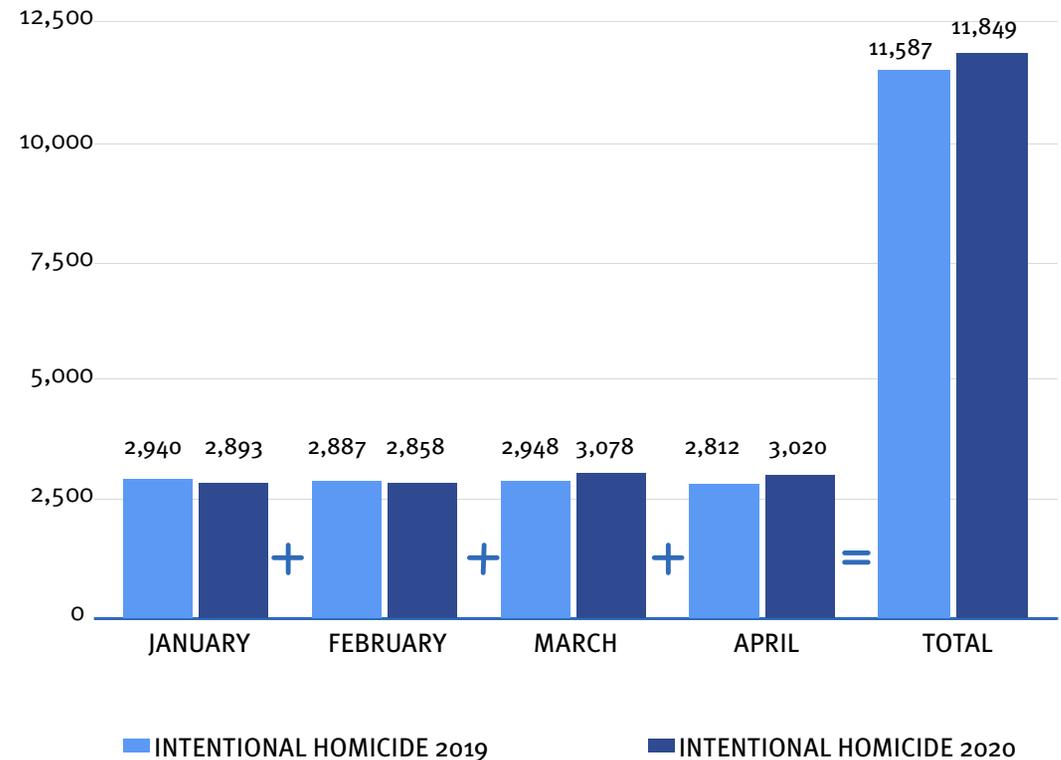
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<sup>11</sup> Pérez, C. et al. (2019). Monitor the use of Lethal Force in Latin America: a comparative study of Brazil, Colombia, El Salvador, Mexico and Venezuela. April 2020, from CIDE Website:<https://tinyurl.com/ybjdf25v>

Additionally, in certain areas of the country red flags of violence continue to be seen. The states that presented the most homicides in absolute terms in 2020 are Guanajuato, México, and Chihuahua, with 1542, 1020, and 913 in respective numbers. The states that least presented this crime were Yucatan with 16, Aguascalientes with 18, and Chiapas with 28. When evaluating the situation based on the homicide rate per 100,000 inhabitants, it is perceived that 7 states have reported more than 50 homicides for each portion of 100 thousand inhabitants. These are Colima with 100, Guanajuato with 74.5, Chihuahua with 73.3, Baja California with 72.4, Michoacán with 59.2, Morelos with 54.9, and Sonora with 54.2.

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HOMICIDES ON THE FIRST QUARTER OF 2019 & 2020



Source: In-house product with information from SESNSP

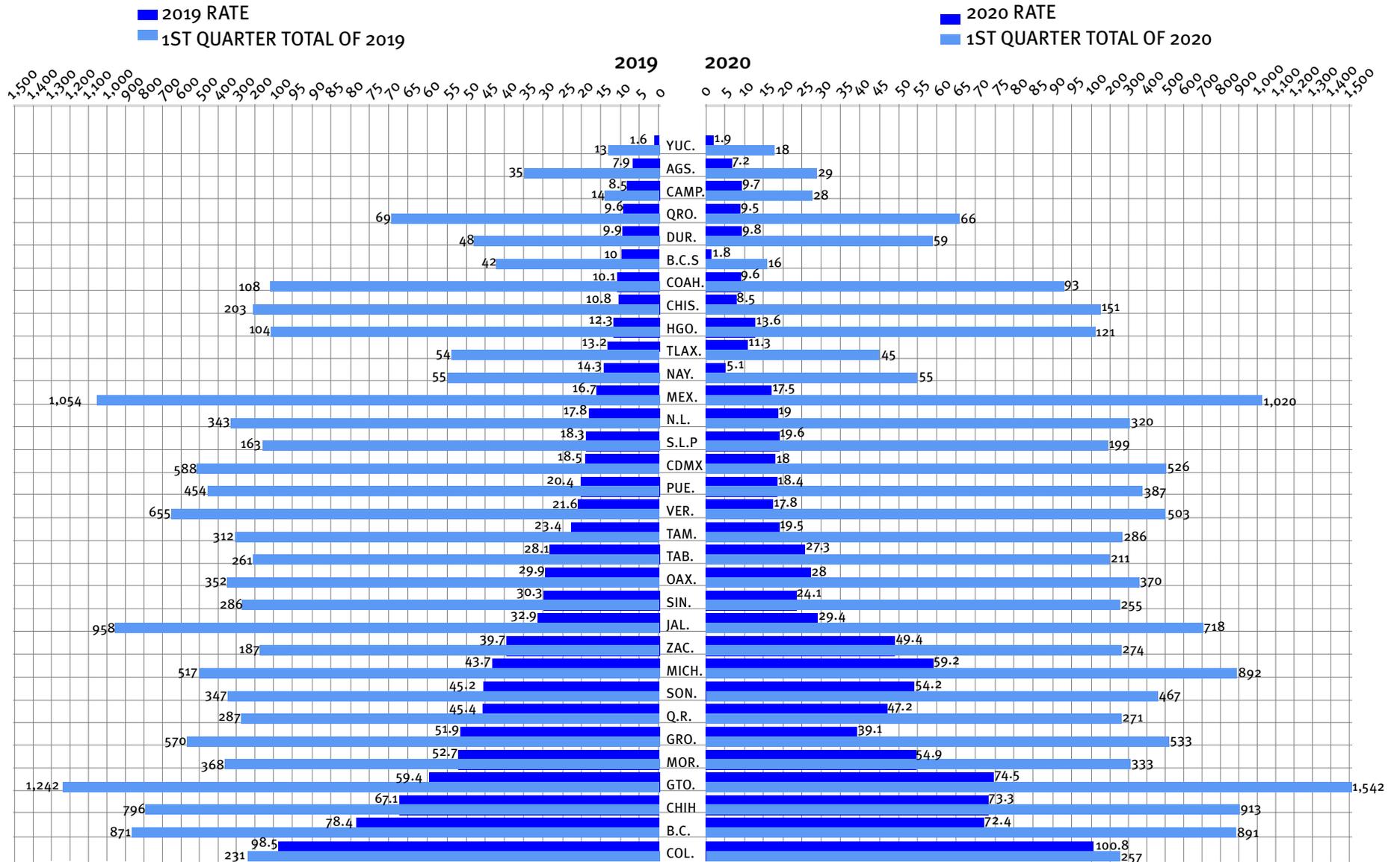
On the other hand, property crimes have partially decreased in the first quarter of 2020. Theft with violence went from 98,825 to 77,499. The theft of vehicles with violence went from 19,929 to 16,725, theft from residential households decreased from 27,332 to 22,417, and business theft decreased from 40,459 to 35,257. Yet, this was not the case with family violence, which increased from 62,225 to 68,468 according to records. Particularly between February and March 2020, more records were presented regarding homicide, rape, and family violence. Again, it is worth mentioning that there are some anomalies with the data on family violence since states such as Tlaxcala did not report a single case for this crime in March 2020, and only registered five in the entire quarter of the same year.

Overall, alerts arise that the National Security Strategy has not improved crime incidents in Mexico. Crimes against people's lives have increased, yet the progress made so far in the process of strengthening the local police is not clear, the National Guard seems to respond to military logic and the use of the Armed Forces has become permanent, at least so it seems until the end of the current administration. In case

the decision is made to continue on the same path, 2024 could end with truly alarming security numbers. This is probably due to the lack of institutional capacity that has been shown up to now, the security strategy has ended, and once and for all, the decision to institutionalize the militarization of public security that in the last governments has failed greatly.

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## NUMBER AND RATE OF MURDERS PER EVERY 100 THOUSAND INHABITANTS REGISTERED IN MEXICO AT A SUB-NATIONAL LEVEL



Source: In-house product with information from SESNSP

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