



House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing on  
Organized Crime, Gangs, and Human Rights in Latin America

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My name is [Stephanie Brewer](#) and I am Director for Mexico with [WOLA](#), the Washington Office on Latin America. Thank you for convening this important hearing.

Mexico is a paradigmatic example of how policies that purport to respond to organized crime by violating human rights generate devastating consequences for victims and their families, while failing to build security and the rule of law. When State agents operate by violating rights, the result is an institutional environment where authorities learn to routinely falsify information, hide their activities, and operate outside the law—all ingredients that foster corruption, further abuses, and lack of progress in reducing crime.

Today, it's necessary to analyze Mexico's anti-crime policies not only from a human rights perspective, but in light of their broader effects on civil-military relations and on Mexico's democratic institutions, especially the judicial branch.

Mexico's principal [response](#) to organized crime has been military deployment. This approach increased sharply—with U.S. support—during the presidency of Felipe Calderón (2006-2012), in the framework of a “war on crime” that led to a dramatic increase in rights violations. Over the following decade and a half, annual homicides more than tripled, disappearances skyrocketed, and criminal groups fragmented and reconfigured. Mexico's population suffered the consequences.

Military human rights violations have since fallen from the truly extreme numbers seen during Calderón's tenure, but continue to occur. Current president Andrés Manuel López Obrador has [deepened](#) the military model, replacing the civilian Federal Police with a militarized National Guard. The armed forces have seen dramatic budget increases, despite their lack of transparency. This occurs even as the military [spies](#) on human rights defenders, [hides information](#) regarding serious rights violations, and [fails to comply](#) with legal obligations such as registering its arrests in the National Detention Registry.

Moreover, militarization as a model fails to address Mexico's low rates of effective criminal investigations. Mexico cannot militarily deploy its way out of this problem. Violence occurs due to this climate of impunity and to [collusion](#) between [state and non-state](#) actors. State agents may work directly with organized crime, as in the context of the notorious enforced disappearance of the 43 [Ayotzinapa](#) students, in which security forces at different levels, both civilian and military, were found to be in collusion with criminal groups. At best, authorities may turn a blind eye to such groups' activities.

A second tendency seen in Mexico are legal actions and discourse that seek to [weaken](#) the autonomy of the judicial branch. In 2019, Mexico increased the list of crimes under which defendants are placed in mandatory pretrial detention; that is, judges are stripped of their authority to decide who goes to prison while awaiting trial. This generates a perverse incentive for authorities to focus on increasing the number of people physically going to

prison to present an image of being tough on crime, while not necessarily having to build solid cases against them—in a country where arbitrary detentions and trials have long been endemic.

In addition, López Obrador and members of his cabinet routinely tell the population that judges who rule against prosecutors are thereby generating impunity. In fact, the vast majority of impunity in Mexico occurs prior to cases ever coming before a judge. This climate of attacks on judicial autonomy only lowers the bar for criminal investigations and weakens judges' ability to protect human rights.

A human rights-based response to crime must recognize that the State will be effective at combatting crime by private actors to the extent that State agents themselves obey the law.

It is vital that Mexico build capable, trustworthy and sufficiently resourced civilian security and justice institutions. It is urgent to improve federal investigations, given that organized crime falls under federal jurisdiction (under the purview of the National Prosecutor's Office). Investigators should prioritize patterns of violence that most affect the population, making use of intelligence, technology, and mapping of networks to construct evidence-based cases that can go to court, with a focus on dismantling criminal phenomena, not just arresting people *in flagrante* or [prosecuting](#) crimes like weapons possession one by one.

Reducing availability of firearms, which flow largely from the United States, is crucial. Another key intervention point to weaken organized crime is reducing recruitment, as recent [studies](#) have highlighted.

We recommend that U.S. cooperation focus on improving the work of civilian institutions and accountability for corrupt and rights-violating agents. Recent and ongoing areas of cooperation that should be prioritized include improving the operation of the criminal justice system; anti-corruption efforts; implementation of Mexico's laws against torture and disappearances; and forensic capacity.

A human rights approach to cooperation also means raising concerns with relevant authorities, and publicly, about rights violations and the need for accountability. It is also essential to maintain human rights reporting requirements in security assistance.

Thank you.

### **The militarization of domestic policing tasks in Mexico**

Upon taking office in December 2006, president Felipe Calderón declared an [all-out war](#) on crime. Although military participation in policing and anti-drug tasks in Mexico was not new, the Calderón presidency ushered in the military's current, central role in the anti-crime strategy. His government initiated a series of [militarized security operations](#), leading to [thousands of armed clashes involving military forces and tens of thousands of arrests](#) by military troops.

Calderón also oversaw [reforms](#) to the country's civilian policing structure; he [stated](#) that his long-term objective was for civilian authorities to take over public security tasks. However, those reforms did not bring about the level of change needed to achieve police effectiveness and accountability. In the end, militarization continued throughout the Calderón administration. President Enrique Peña Nieto would [repeat, with some differences, the same cycle](#) during his 2012-2018 presidency: he touted the creation of a new federal security force called the [Gendarmerie](#), ended up incorporating this force into the then Federal Police, and [maintained military deployment](#) throughout his term. Under current president Andrés Manuel López Obrador, the territorial deployment of security forces includes [over 100,000](#) National Guard troops, a force that is military in nature and operational structure. The army and navy also [continue](#) to participate directly in security tasks.

In summary, despite some variations, militarization has morphed from a supposedly temporary measure into a long-term strategy. This perpetuates a cycle in which, instead of prioritizing efforts to address civilian institutions' weaknesses and deficiencies, the government cites these flaws to justify long-term militarization. This cycle leaves under-addressed urgent challenges faced by police and justice institutions at all levels, including corruption and human rights violations, but also such basic capacity issues as resources and professionalization. An effective security model instead requires prioritizing the true reform and professionalization of civilian institutions, breaking the cycle of militarizing indefinitely as a failed response to police corruption and local forces' lack of capacity.

The results of the militarized war on crime have been catastrophic. Annual homicides more than tripled from the Calderón presidency onwards. Arrests and killings of crime "kingpins" have fostered the [fragmentation](#) of criminal groups, [leading to increased violence](#). Shoot-outs with security forces [trigger increases](#) in local homicide rates. The overwhelming majority of the roughly [113,000](#) cases of disappeared and missing people recorded by the government have occurred since 2006. A significant percentage of [homicides](#) and [disappearances](#) in recent years are concentrated in certain regions of the country, including several of Mexico's most [populous states](#). A significant number of disappearance cases are thought to involve security forces working in collusion with criminal organizations.

The López Obrador administration has overseen a reduction in Mexican federal security forces' levels of frontal combat against criminal groups. Scaling back the use of warlike tactics that have increased violence without controlling insecurity can, in itself, be considered a positive step. However, this modification in the strategy has not been accompanied by appropriate and sufficient measures to address ongoing violence in the country. Today, a range of criminal groups continue to victimize the population. The foregoing confirms that authorities have not used these 17 years of militarization to put in place sustainable and effective anti-violence measures at the national level.

Mexico's militarized war on crime also triggered high levels of [serious human rights violations](#), particularly during the Calderón administration. [Enforced disappearances](#) committed by the [army](#), the [navy](#), and other security forces (including at the state and municipal level) soon became one of the most high-profile expressions of this human rights crisis. Another widely documented pattern has been the [arbitrary detention and torture](#) of civilians, including the torture of innocent people subsequently charged for crimes they did not commit.

There are [numerous](#) documented [cases](#) of the armed forces killing civilians who posed no imminent threat and/or who were not participating in any crime, thus constituting [extrajudicial or arbitrary executions](#). The perpetrators have repeatedly altered the scenes of these crimes. One example is the 2014 [Tlatlaya](#) case, in which it was also revealed that the soldiers responsible for killing a group of civilians had been operating under orders to "[take out criminals](#)" during nighttime hours. In July 2020, part of an extrajudicial execution committed by soldiers was [captured on video](#) in Nuevo Laredo, Tamaulipas—one of a series of civilian deaths at the hands of soldiers in that city over the past several years, which include [cases](#) in 2022 and 2023 of arbitrary [killings](#) and [alteration](#) of crime scenes by the army.

In addition, evidence has continued to emerge over the past year of how the military [spies](#) on human rights defenders, [hides information](#) in its [possession](#) regarding serious human rights violations, and [fails to comply](#) with legal obligations such as registering its arrests in the National Detention Registry.

In this context, it is vital that Mexico's authorities address the structural factors driving violence—starting with the State's own role in violent phenomena. As [exemplified](#) in a series of [high-profile cases](#) over the last decade and a half, criminal groups routinely benefit from the tolerance or participation of State actors. State agents may work in direct collusion with organized criminal groups to commit crimes, as occurred in the context of the

notorious [Ayotzinapa](#) enforced disappearance case, in which security forces at different levels of government, both civilian and military, were found to be in collusion with local criminal groups. Another well-documented example is the level of control and penetration of State institutions at all levels by the Zetas group in [Coahuila](#) state in past years, facilitating large-scale killings and disappearances.

In short, the power exercised by criminal networks in Mexico can be understood only in light of the State's varying [relationships](#) of tolerance or collusion with criminal [groups](#), the consequences of which include a lack of effective investigation of both regional and local patterns of violence, which go well beyond the activities of transnational cartels.

Despite all the foregoing, the López Obrador administration continues to deepen different forms of [militarization](#) and [militarism](#) in Mexico. Today, military deployment in Mexico stands at [over a quarter of a million](#) army, navy, and National Guard troops. López Obrador also continues to seek to officially [convert](#) the National Guard into one of the armed forces under the command of the Defense Ministry (*Secretaría de la Defensa Nacional*, SEDENA), a role that it already fulfills in practice.

### **Excessive use of pretrial detention, including mandatory pretrial detention**

Mexico's response to crime also suffers from an overuse of pretrial detention, stemming in large part from norms that allow its use without complying with human rights standards. Chief among these is the concept of mandatory pretrial detention (*prisión preventiva oficiosa*, PPO), currently in force in Article 19 of Mexico's [Constitution](#). Under PPO, people accused of any of a long list of crimes are imprisoned while awaiting trial, without the prosecutor's office having to present any reason to justify the deprivation of liberty. A number of UN bodies have determined that PPO is [incompatible](#) with human rights, and Mexico is currently required by [two judgments](#) of the Inter-American Court of Human Rights to modify its legal framework in this area, but the government has not complied.

Mexico's overuse of pretrial detention, including the expansion of PPO through a 2019 [constitutional reform](#), seriously disrupts the effective investigation and prosecution of crimes. At any given time, [roughly 40 percent](#) of Mexico's prison population is in pretrial detention, but if we look just at who is being imprisoned today, [more than eight out of ten](#) people are being sent to prison without a conviction. For women in some states, this statistic nears or reaches 100%. Among all measures imposed on defendants awaiting trial, pretrial detention is the [rule](#), with most pretrial detention being mandatory, especially at the federal level.

The [median length](#) of criminal proceedings with mandatory pretrial detention in 2022 was over 200 days, and over 250 days for women. Some people await sentencing in prison for years. Spending months or years in pretrial detention has serious family, economic, and other impacts, in addition to the suffering, risks, and human rights violations that detention conditions themselves may entail. From this place of desperation, people have a strong incentive to seek any way to get out of prison as soon as possible, even if it means confessing to a crime they did not commit. [National](#) and [international](#) non-governmental research warns of the risk that people prosecuted in Mexico are accepting a form of plea bargaining known as the abbreviated procedure (*procedimiento abreviado*)—that is, they agree to confess to the crime and waive their right to a trial in exchange for a reduced sentence—not necessarily because they are guilty or because they think they will be convicted at trial, but simply because they are imprisoned.

Through pretrial detention and especially PPO, the mere opening of a criminal proceeding becomes a *de facto* punishment that investigative authorities can publicly present as an achievement. If the incarcerated person also accepts the abbreviated procedure, the result is a conviction that authorities can cite as an indicator of the fight against impunity, without the accusation ever having to be proven at trial. Thus, the ease of imposing pretrial detention detracts from the need for investigators to build solid cases, capable of holding up at trial, to solve and punish crimes.

## Attacks on the judicial branch

The empowerment of Mexico's armed forces as a response to organized crime occurs in parallel to actions taken by the current government aimed at [reducing](#) the autonomy and power of various civilian institutions, in particular those that serve as checks on the federal executive branch. Within the realm of criminal justice and human rights, we highlight with particular concern the current administration's continuous [attacks](#) on the judicial branch.

The [president](#) and other officials have [reacted](#) to adverse judicial rulings by [exhibiting](#), [blaming](#), and [announcing](#) [criminal](#) complaints against judges. Beyond concrete cases, the federal government has attacked the judicial branch as a whole for freeing detained people. Authorities seek to [communicate](#) to the population that judges are the ones responsible for [impunity](#) in the country, even though the [data](#) show this to be a distorted assessment.

We recall that judicial authorities have the legal duty to release people who have been arbitrarily detained or against whom there is insufficient evidence to open a judicial proceeding. Only in this way can there be a counterweight to public prosecutors' offices and security institutions to ensure compliance with the law and that crimes are duly investigated. In a country with endemic failures in criminal investigations and a long history of falsification of the circumstances of arrests (linked to practices of torture and the fabrication of false accusations), strengthening this counterweight remains a crucial task.

Despite the foregoing, López Obrador has publicly posited a false dilemma between due process and "justice", [equating](#) due process guarantees with legal "technicalities" and objecting to such guarantees being invoked "as a pretext to free people left and right." The impunity that reigns in Mexico mainly occurs before cases are ever brought before a judge, and the actions of the judicial branch are a far cry from releasing detainees "left and right." Even so, the president still constantly blames judges for [impunity](#).

This environment prompts concerns about the impact of the government's discourse on the freedom that judicial authorities feel to apply the law without fear of reprisals, as well as on the population's own perception of the importance of an independent judicial branch as a fundamental element of a democracy.

## U.S.-Mexico security and rule of law cooperation in recent decades

### *The Merida Initiative (2008-2021)*

[The Merida Initiative](#), a framework for bilateral security, rule of law, and drug control cooperation, was adopted in 2008. While it included technical assistance and other support for civilian police and justice institutions, the Merida Initiative initially embraced a war-on-crime approach, [investing](#) significant [resources](#) in equipping and supporting Mexico's federal security forces, including the military.

Starting in FY2011, the Merida Initiative [evolved](#) toward a greater focus on building institutional capacity and the rule of law, with [projects](#) aiming to professionalize security and justice institutions, support Mexico's transition to an adversarial criminal justice system, combat corruption, and promote human rights, among other objectives. Such projects have been [managed](#) by the Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) and by the United States Agency for International Development (USAID). In total, Congress appropriated more than [\\$3 billion](#) under the Merida Initiative. For its part, the U.S. Department of Defense provides [assistance](#) to Mexico separately.

### *The Bicentennial Framework*

In 2021, the governments of Mexico and the United States announced a new security and rule of law cooperation plan: the [Bicentennial Framework for Security, Public Health, and Safe Communities](#). Under the Bicentennial Framework, a central priority of the United States has been combatting the production and [trafficking](#) of [fentanyl](#)

in the midst of an overdose crisis that [surpasses](#) 100,000 victims annually. For Mexico, the priority has been to call for more [actions](#) from the United States to reduce the flow of [weapons](#) into Mexican territory. These two priorities were [designated](#) as core elements of [Phase Two](#) of the Bicentennial Framework, announced in March 2023.

Within this context, while U.S. cooperation with Mexico evolved over the last decade and a half toward a less militarized focus, currently the Mexican armed forces perform roles directly related to U.S. priorities like fentanyl interdiction. In this context, the risk increases of the bilateral relationship reinforcing the participation of Mexico's armed forces in civilian duties. This occurs even as supply reduction efforts within Mexico are [unlikely](#), even in the best of circumstances, to curtail the overall fentanyl supply in the United States in a way that would significantly reduce overdose deaths, highlighting the vital importance of actions on the U.S. side of the border to address this crisis.

## **Recommendations**

To improve security in Mexico, it is necessary to transform the impunity and corruption that enable current levels of violence. Several existing areas of bilateral cooperation remain relevant to increasing Mexico's institutional capacity to provide access to justice to its population. In particular, we recommend that the United States ensure that its cooperation focus on improving the work of civilian institutions and accountability for corrupt and rights-violating agents. Some recent and ongoing focus areas of U.S. [human rights](#) and rule of law assistance that should continue include: working with Mexican partners to improve the operation of Mexico's adversarial criminal justice system; anti-corruption efforts within prosecutors' offices; implementation of Mexico's general laws against torture and disappearances; and forensic capacity.

To improve access to justice, it is crucial that criminal investigations avoid fragmentation, make use of available technology, gather admissible evidence, and analyze patterns of violence, [prioritizing](#) the criminal phenomena that most affect the population. Beyond building capacity, security and investigative bodies require effective internal and external accountability mechanisms. In this area, as one example, [lessons learned](#) from the United States' broad range of experiences with [police oversight](#) can continue to inform discussions and incipient [initiatives](#) to construct supervision mechanisms in Mexico.

A human rights approach in U.S. cooperation also means raising concerns with relevant authorities, and publicly, about such subjects as attacks on human rights defenders, journalists, and family members of the disappeared; spying on activists; and actions to weaken Mexico's civilian institutions. It is also crucial to maintain human rights reporting requirements in U.S. security assistance.

Finally, the fact that the Bicentennial Framework's [launch documents](#) speak of violence reduction and a public health approach to problematic drug use—rather than a “war on drugs”—is not just the product of an evolving dialogue between two governments: it reflects U.S. and Mexican civil society documentation and proposals over many years. Victims, collectives, and non-governmental organizations play a fundamental role in achieving real-world advances in security and justice. Their voices and recommendations should be taken into account by both governments.