

Testimony of Maureen Meyer
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on Human Rights in Mexico

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Tom Lantos Human Rights Commission

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My name is Maureen Meyer and I am the Senior Associate for Mexico and Central America at the Washington Office on Latin America (WOLA). I have worked on the defense and promotion of human rights in Mexico for over 13 years, including four years in Mexico City working for the Miguel Agustin Pro Juarez Human Rights Center. I have coordinated WOLA's Mexico program since 2006.

WOLA works closely with human rights organizations in Mexico to seek justice for victims of human rights violations. We also follow the development of U.S. security assistance to Mexico through the Merida Initiative, where we have emphasized the importance of prioritizing support for judicial and police reform efforts in Mexico and the need to hold security officers responsible for their actions.

In the years I have worked on human rights in Mexico I have seen a greater openness of the Mexican government to international scrutiny and the creation of national human rights programs. Just last year, important reforms were made to Mexico's Constitution that represent the most significant legal change to protect, promote and respect human rights in the country in decades. In spite of these efforts, human rights violations continue to be widespread and the abuses of the past - arbitrary detentions, torture, extrajudicial executions, disappearances - persist today in an environment that is made even more complex by the proliferation of organized criminal groups.

For example, now an investigative police officer who tortures someone so that they sign a self-incriminating testimony may not just be a state agent, he or she may also be working for an organized criminal organization. A municipal police officer who in the past may have robbed and extorted Central American migrants as they travel through Mexico now may also be involved in criminal kidnapping rings targeting this vulnerable population. The majority of the over 50,000 dead as a result of the drug war and their grieving family members more than likely will never see justice in their cases given the Mexican government's failure to effectively investigate and prosecute these crimes. By relying on their connections to political actors, the ease of corruption, and the ability to resort to intimidation and violence, organized criminal groups in Mexico have severely weakened the state's ability to promote and respect human rights and uphold the rule of law. The same institutional weaknesses that have allowed organized crime to flourish in the country are also at the root of human rights violations by Mexican officials.

Given this context, I want to focus my testimony on the Mexican government's efforts to implement institutional reforms to its police and judicial systems as essential elements to creating rights respecting institutions that citizens can trust. While numerous cases are documented and denounced every year, non-existing or ineffective internal and external control

mechanisms and a weak judiciary have created a climate of permissiveness for abuse since soldiers or police are rarely sanctioned for the human rights violations they commit.

Police reform

During the Calderón administration, certain advances have been made to reform Mexico's police, particularly at the federal level. Given the Mexican government's concentration on federal reform and the fact that the United States has provided significant assistance through the Merida Initiative to the Mexican Federal Police, I will focus my testimony on this force.

The establishment of the Federal Police in June 2009 was the most significant change in the restructuring of Mexico's federal law enforcement forces. Essentially, this force integrated the former Federal Preventative Police and the Federal Investigative Agency. When it was created, the federal government also implemented measures to professionalize, train, and modernize the force. These include higher recruitment standards, a revamped police academy, and an integrated communication platform known as *Plataforma Mexico*, which has been the recipient of significant U.S. support.¹

The Calderón administration also adopted measures to vet Mexico's police forces and establish trust control centers (*centros de control de confianza*) that carry out annual reviews of police performance by utilizing a five-part evaluation to determine if officers are fit for duty. The evaluation includes a polygraph test, a drug screening examination, a psychological examination, a socio-economic investigation, and a psychometric evaluation that measures intelligence, aptitude, and personality traits. While these exams are an important tool to root out corruption, as of March 31, 2012, only 29 percent of Mexican law enforcement bodies had been evaluated.² Information currently available from the Mexican government shows that of those evaluated, only 50 percent passed the exams.³ No information is available to assess what happens with the officers who do not pass their exams.

Police experts have expressed concern about the over-reliance on these evaluations, particularly the use of polygraph exams, to vet forces. Cases have already surfaced where officers who repeatedly passed the exams were then investigated and prosecuted for links to organized crime.⁴ Furthermore, officers who "fail" the exams are unable to appeal the decision. Constitutional changes in 2009 have established that officers who fail the exams, or who are accused of any crime, are not able to get their jobs back, even if they are later declared innocent of any wrongdoing. Finally, the reliance on these exams also focuses exclusively on weeding out "bad apples" within the law enforcement bodies; it does not create internal

¹ Eric Olson, "Police Reform and Modernization in Mexico, 2009," Mexico Institute of the Woodrow Wilson International Center for Scholars, September 2009, Washington, DC.

² Secretaría Ejecutiva del Sistema Nacional de Seguridad Pública, *Evaluaciones de Control de Confianza de las Instituciones relacionadas con la seguridad e impartición de justicia en el ámbito estatal y municipal*, http://www.secretariadoejecutivosnsp.gob.mx/work/models/SecretariadoEjecutivo/Resource/723/1/images/Eval_Fed_Est_Marzo.pdf

³ 31 percent of those examine failed the tests and the results were pending for the remaining officers. Sistema Nacional de Seguridad Pública. *Compromiso Evaluaciones de Control de Confianza Enero 2013*, data from November 2011.

⁴ In one case, Victor Gerardo Garay Cadena, the former interim head of the Federal Preventive Police had passed three different trust control tests before being arrested for collusion with the Beltran Leyva brothers. Daniel Sabet, *Police Reform in Mexico: Informal Politics and the Challenge of Institutional Change*, Stanford University Press, May 2012, advanced copy.

mechanisms that would address the institutional weaknesses that have allowed corruption and abuse to flourish.

Another control mechanism within the Federal Police is the Internal Affairs Unit (*Unidad de Asuntos Internos*). Among other tasks, the Internal Affairs Unit is charged with investigating allegations of human rights violations by agents. An analysis of compliance with the recommendations issued by Mexico's National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) in 2009 and 2010 regarding human rights violations committed by the Federal Police suggests that this body has not been effective in addressing human rights violations by this force. To date, the unit has not sanctioned any of the officers implicated in the eight cases documented by the Commission which involve violations such as arbitrary detention, illegal detention, incommunicado, torture, unlawful killing, and assaulting and robbing Central America migrants in transit through Mexico.⁵

It is true that compared to previous Mexican federal police forces, the current Federal Police are better trained on topics such as criminal investigative techniques, crime scene preservation and evidence collection and they also have greater technological capacity. However, the failure to implement strong accountability mechanisms has meant that the same human rights violations committed by Mexico's federal police forces in the past have persisted into the present. In fact, complaints of abuse by Federal Police agents have increased in number just as the force itself has grown, more than tripling in size since 2006. In 2011, the CNDH received 767 complaints of human rights violations committed by the Federal Police, whereas there were 595 complaints in 2010 and only 141 complaints in 2009.

One recent case is exemplary of this situation. On December 12, 2011, approximately 300 students from the Normal Rural College "Raúl Isidro Burgos" organized a protest in Chilpancingo, Guerrero to request a meeting with the governor to discuss their request for better school conditions which had remained unanswered for over three months. Over 70 Federal Police, as well as some 90 state-level investigative and preventative police, violently responded to the protests, which left two students dead. None of the students was armed. According to an in-depth report by the CNDH, 42 people were arbitrarily detained by the security forces and 24 of them were beaten with sticks and batons. Video seen by the CNDH led them to conclude that Federal Police agents had used excessive and unnecessary force in their interactions with the students and that it was this force that initiated the aggression against the students by throwing the first tear gas canister at the protesters. Although all three police forces fired indiscriminately at the students, the Federal Police was first force to fire gunshots, originally just into the air. Apart from the grave human rights violations that occurred against the students, the Commission concluded that all of the forces, including the Federal Police, had failed to adequately secure the scene of the protests and that they had altered the scene, including removing bullets and casings.⁶

Because of the significant assistance provided through the Merida Initiative to better train and equip Mexico's Federal Police, the United States has a vested interest in ensuring that this new force is not undermined by a poor human rights record. We believe U.S. assistance to the Federal Police and state and municipal forces should prioritize support for the development and

⁵ See CNDH Recommendations 1/2010; 13/2010; 23/2010; 32/2010; 49/2010; 65/2010; 43/2009; 72/2009, www.cndh.org.mx

⁶ CNDH, *Recomendación No. 1 VG/2012, sobre la investigación de violaciones graves a los derechos humanos relacionada con los hechos ocurridos el 12 de diciembre de 2011 en Chilpancingo, Guerrero*, 27 March 2012. <http://www.cndh.org.mx/node/694>

strengthening of internal and external control mechanisms well beyond the provision of polygraph equipment or support for the National Police Registry. We further encourage the State Department to determine, in consultation with the Mexican government, ways the U.S. can support the protocols published by the Mexican government on April 24, 2012. These protocols regulate the use of force for the police agencies within the Ministry of Public Security (*Secretaría de Seguridad Pública*) and for the armed forces, and provide guidelines on the detention and transfer of detainees to the custody of prosecutors.

Justice reform

Police and justice reform go hand in hand, since the police are part of a larger set of criminal justice institutions that also need to function well. The ability to investigate, prosecute and sanction effectively those who commit crimes is an essential element to ensuring the rule of law, yet it is estimated that fewer than 25 percent of crimes in Mexico are reported and that only 2 percent of those crimes result in a sentence. Numerous cases taken on by Mexican and international human rights organizations have further shown that of the people who are sentenced, many never even committed a crime. As a Mexican human rights lawyer recently stated, the Mexican justice system has become a “factory for producing guilty people.”⁷

In recognition of the need to change Mexico’s criminal justice system, a series of constitutional and legislative reforms were passed in 2008 that should make the justice system more effective, efficient, and transparent. A main element of these reforms is the transformation of Mexico’s legal system to an adversarial judicial model with the prosecution and defense presenting competing evidence and arguments in open court. This is dramatically different from Mexico’s traditional inquisitorial model where most of the evidenced is presented in written form to the judge and the proceedings take place largely outside of the public view. In theory, these reforms should reduce the possibility of testimony obtained through torture being admitted in legal proceedings. Other important elements of the reforms include the right to the presumption of innocence and opening up alternative means of conflict resolution in criminal procedures.

Given the extent of the reforms being undertaken, the Mexican government established an eight-year transition period for the implementation of the adversarial, oral criminal justice system. So far, the implementation has been slow. According to the federal government’s Technical Secretary for the implementation of the justice reform (*Secretaría Técnica del Consejo de Coordinación para la Implementación del Sistema de Justicia Penal*), four years into the reform process, only three states of Mexico’s 31 (Chihuahua, the State of Mexico, and Morelos) are fully operating under the new justice system and just seven additional states are partially operational. Although several other states are making progress on the reform it is uncertain whether they will be fully instituting the required changes by the 2016 deadline.

A full transition to an adversarial system is important to strengthen the rule of law and gain citizens’ trust in the Mexican judicial system. Currently, the states that are moving forward with the reforms are showing positive results. The preliminary results of a study commissioned by USAID found that in five reformed states, prosecutors are twice as efficient; fewer suspects are being held in pre-trial detention; more cases are being resolved through alternative dispute resolution mechanisms; the timeframe to resolve a case has been reduced; and judges, prosecutors and public defenders are actually doing their jobs, being present at all hearings.⁸

⁷ Daniel Blancas Madrigal, “Especialistas en derecho consideran que el encarcelamiento de inocentes en nuestro país refleja deficiencias estructurales en impartición de justicia, policías investigadores y jueces,” *La Crónica de Hoy*, 12 February 2012 http://www.cronica.com.mx/nota.php?id_noticia=636415

⁸ Preliminary results of a joint study between USAID and Mexico’s Technical Secretariat (SECTEC) on the impact of justice sector reform.

Contrary to the progress in some states, reform at the federal level has been slow. It was not until September 22, 2011, over three years after the reform went into force, that President Calderón submitted a bill to the Chamber of Deputies which would replace Mexico's current Federal Criminal Procedure Code.⁹ The Mexican legislative period ended on April 30, 2012 without the code being passed and it is unlikely that any reform will be approved until after the new president takes office in December 2012. This means that many states will continue to operate under a different judicial system than the federal government. Notwithstanding the need for a new federal code, the proposal presented by President Calderón contained several articles that would have represented a setback for human rights protections, including giving the police and any other authority, such as the armed forces, the ability to carry out warrantless detentions and searches. The proposal also included exceptions to admitting evidence that otherwise would be considered invalid, which some fear could allow practices such as torture to continue.¹⁰

Apart from the challenges in reforming the system itself, old practices die hard and even in states that have implemented the adversarial criminal justice system, such as Chihuahua, confessions obtained through torture continue to be admitted in legal proceedings. Such is the case of Israel Arzate Meléndez, who was detained by Mexican soldiers on February 3, 2010, in Ciudad Juárez and taken to the military barracks where he was beaten, tortured with electric shocks to the chest and abdomen, and asphyxiated repeatedly. Israel was not seen again until the Attorney General's Office of the State of Chihuahua presented him to the media on February 6, 2010 as one of those allegedly involved in the massacre of 15 young people that had occurred on January 30, 2010.¹¹ In Recommendation 49/2011, the CNDH confirmed that Israel had been tortured. Although he informed the judge during his arraignment that he had been tortured into giving a false confession, she refused to view the visible marks on his body, did not open an investigation into the torture, and ordered that his trial proceed. Two years after his detention, his appeal challenging his indictment has yet to be resolved.¹²

Increased efforts to implement the judicial reforms, as well as measures to address historic challenges to the judicial system such as corruption and lack of transparency, are essential to overcoming the alarming 2% conviction rate for crimes in Mexico and guaranteeing more effective investigation and prosecution of crimes, including human rights violations. U.S. support for the judicial reform process has been instrumental in moving reforms forward at the state and federal level, and continued support is important to further strengthen the rule of law in Mexico. Funding for USAID Mexico's work on justice reform at the state level is particularly important to ensure ongoing engagement in the states that have already benefited from assistance. It should

⁹ Diana Ragis, "New Penal Code Proposed by Calderón," Justice in Mexico Project, Trans-Border Institute, University of San Diego, September 2011 <http://justiceinmexico.org/2011/09/26/new-penal-code-proposed-by-calderon/>

¹⁰ Joint Statement by Mexican human rights organizations, "Código Federal de procedimientos Penales; regresivo y contrario al espíritu del Sistema Penal Acusatorio," 27 March 2012 http://www.cmdpdh.org/index.php?option=com_content&view=article&id=498%3Acomunicado-conjunto-codigo-federal-de-procedimientos-penales-regresivo-y-contrario-al-espiritu-del-sistema-penal-acusatorio&catid=37%3Acomunicados&Itemid=162&lang=en

¹¹ This refers to the killing of 15 young people attending a party in Ciudad Juárez.

¹² "State and federal governments lie about the existence of evidence against Israel Arzate Meléndez," Press release from Miguel Agustín Pro Juárez Human Rights Center (Center Prodh), Women's Network of Ciudad Juárez, Juárez Migrant Support Center, 22 March 2012 http://centroprodh.org.mx/index.php?option=com_content&view=article&id=501%3Agobiernos-estatal-y-federal-mienten-sobre-la-existencia-de-pruebas-en-contra-de-israel-arzate-melendez-&catid=209%3Afront-rokstories&lang=en

also be mentioned that several other states have requested USAID support that cannot be addressed until additional resources are secured.

Conclusion

Recently, the Mexican Congress passed several laws that are important for human rights and human rights defenders, including a law creating a national database for missing and disappeared persons, a law for the protection of human rights defenders and journalists, and a law for victims of violence and human rights violations. The federal government's issuing of several protocols for Mexico's security and judicial institutions on the adequate use of force, chain of custody, and detention procedures is also important. At the same time, a reform to Mexico's Military Code of Justice that would have excluded from military jurisdiction human rights violations committed by soldiers against civilians, recently failed to pass due to the ongoing resistance of Mexico's Defense Ministry. This resistance to change is illustrative of the continued challenges in combatting impunity for human rights violations in Mexico.

Although legal reforms are important, it is essential to address the underlying factors within Mexico's institutions that will change practices and behaviors. The creation of laws and guidelines or providing human rights training for security forces are only effective if the soldier or police officer knows that abuses will be investigated and sanctioned. Transparency and accountability, including internal and external controls to investigate corruption and abuse, should be priorities for the Mexican government to prevent human rights violations and to hold abusers responsible for their actions. Police and justice reform are complementary efforts, and the U.S. should prioritize its future assistance on these areas.

Finally, the United States should use the leverage provided by the human rights requirements in the Merida Initiative. These requirements currently condition 15% of assistance for Mexican military and police forces until it is determined that the Mexican government is investigating and prosecuting in the civilian justice system military and police personnel who are credibly alleged to have violated human rights, the Mexican military and police are cooperating on these cases, and prohibitions on the use of testimony obtained through torture are being enforced. While we understand the magnitude of the security challenges facing Mexico, efforts to combat organized crime and violence should not be at the expense of respect for human rights. Withholding the conditioned funds until meaningful progress on these areas is made would send a clear message that the United States is concerned about the gravity of the human rights violations that have occurred in Mexico.

The current violence in Mexico is often horrific, such as the 23 bodies that were found in Nuevo Laredo on Friday, May 4, many with signs of torture. The expansion of organized crime in the country has left thousands of victims and grieving family members; because it has further weakened the government's capacity to guarantee human rights, organized crime also needs to be addressed as a human rights issue. As Mexico struggles to quell the violence and the United States government considers future security assistance to Mexico, it is important to remember that the same institutional reforms that are needed to address human rights violations are also essential in order to deal effectively with organized crime and violence. We believe it is in both countries' best interest to work to curb the systematic human rights violations being committed by Mexican security forces as an important way to strengthen the rule of law and citizen security in Mexico.

Thank you.