

The logo for Human Rights Watch, consisting of a dark blue square with the words "HUMAN RIGHTS WATCH" in white, bold, sans-serif capital letters, arranged in three lines.

H U M A N  
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W A T C H

Testimony of Nik Steinberg,  
Mexico Researcher for Human Rights Watch  
on “Human Rights in Mexico”  
before the  
United States Congress  
Tom Lantos Human Rights Commission  
May 10, 2012



Mr. Chairmen, Commission members:

Thank you for organizing this critical hearing to address the human rights situation in Mexico. It is an honor to be here.

My name is Nik Steinberg and I am the Mexico researcher for Human Rights Watch (HRW). My remarks today will be divided into two parts. The first will lay out HRW's research on widespread abuses in Mexico's efforts to combat organized crime and the impunity for security forces who commit them, which we argue have been counterproductive to improving public security. And the second will recommend what the United States government can do to help Mexico address this serious problem, particularly through enforcing the human rights requirements in the Merida Initiative.

## **I. HUMAN RIGHTS AND PUBLIC SECURITY IN MEXICO**

It has been more than five years since Mexican President Felipe Calderón declared “war” on organized crime in Mexico. In the time since, the country has experienced a staggering rise in violence. At least 50,000 Mexicans have died in drug-related violence since Calderón took office, with the number of killings increasing with each passing year, from less than 3,000 in 2007 to over 15,000 in 2010—the last full year for which the Mexican government has released casualty numbers.

This dramatic surge in violence has been driven in large part by the struggle between and within powerful cartels to control the drug trade and other lucrative illicit businesses such as human trafficking. These groups have committed serious crimes against one another, as well as against members of the security forces. Their illegal activities have touched virtually every sphere of public life, from extortions of small businesses to blockades of major highways, from closures of schools to assassinations of public officials. And they have used public displays of violence to sow terror not only among their rivals, but also within the general population.

The Mexican government has a duty to take measures that will help protect Mexicans from crime; and when Mexicans are the victims of crime, the government has an obligation to ensure the criminal justice system will function effectively to provide a remedy. When President Calderón took office, he inherited a country whose cartels were growing in strength, and whose security forces—both military and civilian—had a long track record of committing abuses when it came to fulfilling this crucial function.

Rather than taking the necessary steps to reform and strengthen Mexico's abusive law enforcement agencies, Calderón chose to use them to launch a “war” on Mexico's increasingly powerful criminal

groups. He made the military the centerpiece of his public security strategy, which was almost entirely focused on confronting the cartels with force.

More than 45,000 soldiers are currently involved in large-scale counternarcotics operations across Mexico. In the places where they are deployed, these soldiers have taken on many of the responsibilities of both police and prosecutors—from patrolling neighborhoods to responding to shootouts, from investigating individual crimes to gathering intelligence on criminal groups—even as civilian oversight of the military’s operations has been reduced. The Armed Forces have been joined in their efforts by thousands of officers from the newly reconstituted Federal Police, and more than 2,200 separate state and municipal police forces, though cooperation between these security forces is often limited or superficial.

How have the security forces performed? To answer this question, Human Rights Watch has conducted in-depth research in the regions of Mexico most affected by drug-related violence. We have interviewed a wide array of government officials, security forces, victims, witnesses, human rights defenders, and others. We have also analyzed official statistics, gathered data through public information requests, and reviewed case files, legal proceedings, and human rights complaints, among other forms of evidence.

What we have found is a public security policy that is badly failing on two fronts. It has not succeeded in reducing violence. Instead, it has resulted in grave human rights violations committed by security forces, virtually none of which appear to be adequately investigated. In sum, rather than strengthening public security in Mexico, Calderón’s “war” has exacerbated a climate of violence, lawlessness, and fear in many parts of the country.

## **Widespread Human Rights Violations**

Human Rights Watch has found evidence of a significant increase in human rights violations since Calderón launched his “war on organized crime.” In five states where we have conducted in-depth research, we have found that members of security forces systematically use torture to obtain forced confessions and information about criminal groups. And we have documented evidence pointing to the involvement of soldiers and police in extrajudicial killings and enforced disappearances around the country.

The patterns of violations that emerge in the accounts of victims and eyewitnesses, an analysis of official data, and interviews with government officials, law enforcement officers, and civil society groups strongly suggest that the cases documented in this report are not isolated acts. Rather, they are examples of abusive practices endemic to the current public security strategy.

### *Torture*

Human Rights Watch has obtained credible evidence of torture in more than 170 cases in five states. The tactics we documented—which most commonly included beatings, asphyxiation with plastic bags, waterboarding, electric shocks, sexual torture, and death threats—are used by members of all

security forces: the Army, the Navy, and the federal, state, and local police. The apparent aim of such tactics is to extract information about organized crime, as well as to elicit forced confessions that not only accept guilt but also *a posteriori* conceal the abuses by security forces leading up to and during coercive interrogations. Torture is most often applied between the time when victims are arbitrarily detained and when they are handed over to prosecutors, a period in which they are often held incommunicado on military bases or other illegal detention sites.

### *Enforced Disappearances*

Human Rights Watch has documented 39 “disappearances” where evidence strongly suggests the participation of security forces. Although witnesses saw security forces carry out the abductions in these cases, state officials denied having detained the victims or ever having held them in custody. In addition to cases we have documented, the increasing number of cases reported to the UN Working Group on Disappearances, Mexico’s national and state human rights commissions, and Mexican human rights groups all point to a rising incidence of the practice across the country. However, the crime’s prevalence is obscured by government officials’ classification of nearly all disappearances as *levantones*, or abductions by organized crime, before cases have even been investigated.

### *Extrajudicial Killings*

Human Rights Watch obtained credible evidence in 24 cases that security forces committed extrajudicial killings, and in most of these cases took steps to conceal their crimes. These killings fall into two categories: civilians executed by authorities or killed by torture; and civilians killed at military checkpoints or during shootouts where the use of lethal force against them was not justified. In the majority of these cases soldiers and police tampered with crime scenes, either to falsely present victims as armed aggressors or to cover up their excessive use of force. And in some cases, investigations strongly suggest that security forces manipulated crime scenes to present the appearance that extrajudicial killings were executions perpetrated by rival drug cartels.

## **Failure to Investigate Human Rights Violations**

Military and civilian prosecutors consistently fail to conduct thorough and impartial investigations into cases where evidence suggests civilians have been subjected to grave abuses. Human Rights Watch documented systematic flaws in the investigations into torture, enforced disappearances, and extrajudicial killings which prevent soldiers and police from being held accountable.

### *Impunity for Torture*

The Istanbul Protocol is an internationally recognized set of guiding principles to assess the physical and psychological condition of a potential victim of torture—and Mexico has committed to apply it in cases of suspected ill-treatment. Yet federal and state justice officials rarely follow it. In addition, prosecutors routinely fail to critically examine evidence of possible mistreatment of detainees, such as medical exams documenting severe injuries or cases in which the “confessions” of several suspects are nearly verbatim copies of one another. Such failures mean that justice officials do not exclude confessions obtained through torture, nor do they collect evidence that is crucial for

prosecuting soldiers and police who use abusive tactics. Instead, prosecutors and in some cases judges dismiss victims' claims as cynical ploys to evade punishment, and systematically classify cases of possible torture as lesser crimes such as "injuries" without adequately investigating the allegations.

#### *Impunity for Enforced Disappearances*

The period immediately following an alleged disappearance is critical if investigators are to gather information that may reveal the whereabouts of the victim and prevent the victim from "disappearing" indefinitely or being killed in custody. However, justice officials routinely reject requests by victims' families to open investigations in the immediate aftermath of alleged abductions perpetrated by state officials and sometimes even refuse to register official complaints. Instead, justice officials often direct families to police stations and military bases to see if the victim is in their custody, and make them wait several days before registering an official complaint. Government officials reflexively claim such cases are *levantones*, or abductions perpetrated by rival cartels, and in many cases accuse victims of having been targeted because they were involved in criminal activities—all prior to conducting an investigation. If and when investigations into disappearances are eventually opened, they are marked by serious shortcomings, such as not interviewing the state officials allegedly involved or tracing calls from victims' cell phones after their abductions.

#### *Impunity for Extrajudicial Killings*

Despite the growing numbers of casualties in "confrontations" between security forces and alleged criminals, most killings are not investigated. In the rare instances in which investigations into such cases are opened, justice officials fail to take basic steps such as conducting ballistics tests or questioning the soldiers and police involved. Rather than question official reports—many of which are marred by inconsistencies and challenged by witness accounts—prosecutors accept security forces' reports as fact and overlook evidence of excessive use of force or torture leading to death. Furthermore, in more than a dozen cases, families of the victims of killings told Human Rights Watch they had been pressured by the Army to sign settlements agreeing to abandon all efforts to seek criminal punishment for soldiers in exchange for compensation.

#### **Military Justice**

Nowhere is impunity more pronounced than in the military justice system. In our 2009 report, *Uniform Impunity* (<http://www.hrw.org/reports/2009/04/28/uniform-impunity>), Human Rights Watch documented the lack of impartiality and independence that results when the military investigates itself, and recommended that Mexico reform its Military Code of Justice to ensure that all cases of alleged human rights violations committed by the military against civilians be investigated and prosecuted in the civilian justice system. Since that report was released, the Inter-American Court of Human Rights has issued four rulings in which it stated that under no circumstances should military jurisdiction apply to any human rights violations committed by the military against civilians.

In July 2011, Mexico's Supreme Court ruled that Mexico's courts are obligated to comply with a November 2009 Inter-American Court judgment in an enforced disappearance case. In that case—*Radilla Pacheco v. Mexico*—the Inter-American Court ordered Mexico to modify its Code of Military Justice to make it "compatible with international standards," and said that, "Regarding situations that violate the human rights of civilians, military jurisdiction cannot operate under any circumstance." Mexico's Supreme Court ruled that the Radilla decision was binding, and that the international court's jurisprudence should be taken into account by Mexico's judges.

### *Is the practice changing?*

In a December 9, 2011 speech, President Calderón said that, in light of the Supreme Court's decision, he had instructed his Interior Minister and his executive legal counsel to provide the Senate with recommendations for "enriching the process of drafting the legislation [to reform the Military Code of Justice]...and adapting it to the criteria of the Supreme Court." He also said he was encouraging his Attorney General to work with the Armed Forces to explore ways the military could begin to decline jurisdiction in cases where soldiers are alleged to have committed human rights abuses.

Yet the practice of investigating such abuses remains unchanged, as do the results: complaints of human rights violations continue to be sent to the military justice system, where they still go unpunished. In our November 2011 report, *Neither Rights Nor Security* (<http://www.hrw.org/reports/2011/11/09/neither-rights-nor-security-o>), Human Rights Watch found that the Military Prosecutor's Office opened 3,671 investigations into human rights violations committed by soldiers against civilians from 2007 to June 2011. Only 29 soldiers have been convicted for these crimes in military courts: less than one percent.

In recent months, the Calderón government and the Mexican military have publicly claimed that more cases of military abuses are being transferred to civilian jurisdiction, demonstrating a shifting "tendency" in handling these cases. However, government officials have been unable to provide Human Rights Watch with concrete evidence that cases are being transferred from military to civilian jurisdiction. Besides the four cases of military abuses tried by the Inter-American Court—in which the court explicitly mandated the investigations be transferred to civilian jurisdiction—we are only aware of two additional cases in which investigations into alleged military abuses have been transferred from military to civilian prosecutors. The dearth of cases transferred, and the fact that new cases of reported military abuses continue to be channeled to the military justice system, make clear that the *de facto* practice of the military investigating itself remains unchanged.

### **Lasting Impact on Victims and Their Families**

Serious human rights violations committed by security forces can inflict deep and lasting wounds on victims and their relatives. Victims of torture told Human Rights Watch they experienced ongoing physical and psychological effects as a result of what they endured. A victim of waterboarding said that for months afterwards he could not bear to take a shower because the water reminded him of his torture. Even drinking liquids was difficult for him. Another victim who was suffocated repeatedly

and beaten severely to the head said that since his interrogation he has suffered serious short-term memory loss, incapacitating migraines, and the loss of hearing in one ear.

The trauma and fear generated by grave human rights abuses extends to entire families. A young man who witnessed the extrajudicial execution of his brother by Navy officers in their family's home described feeling terror every time he sees a military convoy pass. He said that since the night of the shooting his family has not returned to the home, because the place is too vivid a reminder of the incident and they do not feel safe living there. Abuses often have a significant economic and social impact on victims' relatives, as in the case of the uncle who adopted the two young children of his brother and sister-in-law after they were executed by soldiers from the Army.

The families of the disappeared suffer particularly cruel treatment, deprived of a sense of closure as they wait in vain for news about the fate of a loved one. This cruelty is compounded by government officials who, even when all evidence points to the contrary, accuse their loved ones of having been targeted because they were criminals, and by the hollow efforts of authorities to investigate, which leave relatives feeling dispirited and powerless. "We don't even know what to do anymore," the wife of one victim told Human Rights Watch. "We know who did this and we can't do anything."

For the relatives of victims of killings by security forces, the fact that those responsible are not prosecuted and that victims are usually publicly branded as criminals is a source of ongoing suffering. And like the families of the disappeared, they continue to struggle to learn what happened to their loved ones. Said one father whose son had been killed by soldiers a year-and-a-half earlier, "They think that as time passes, we'll forget what happened. We can't. For us, it's like it was yesterday. And we can't resolve this until they admit they made a mistake—and are punished for it."

### **Failure to Improve Public Security**

Not only do human rights violations in themselves undermine the rule of law, but they also can be counterproductive in reducing violence, dismantling criminal networks, and building the public confidence in institutions that is critical to effective counternarcotics efforts. Since the outset of Calderón's "war on drugs," violent crime has increased; abusive policing has undermined the investigation and prosecution of criminal suspects; and widespread abuse and corruption has antagonized civilians who otherwise could provide security forces with crucial information.

Homicides tied to drug violence have increased every year since President Calderón implemented his public security strategy. The approximately 15,000 killings allegedly tied to organized crime in 2010, for example, represented an increase of nearly 60 percent from the previous year. In Baja California, Chihuahua, Guerrero, Michoacán, Sinaloa, Nuevo León, and Tamaulipas—all states where the federal government has launched major counter-narcotics operations involving the military—the homicide rate in both 2008 and 2009 reached rates nearly twice as high as what had been the record over the previous two decades.

This rise in violence has not been matched by a rise in criminal prosecutions. While security forces have detained tens of thousands of suspected cartel members—the majority allegedly caught in the

act of committing a crime (*in flagrante*)—only a fraction of these cases have led to investigations, even fewer have resulted in suspects being charged with crimes, and fewer still have led to criminal sentences. For example, of the 35,000 killings the government says were tied to organized crime from December 2006 to January 2011, the federal prosecutor’s office registered 13,845 killings. (According to the Mexican Constitution, if indeed these killings were all tied to organized crime, federal prosecutors have the power to investigate and prosecute them.) The office provided conflicting information as to the number of those cases it was investigating—first reporting it had opened 1,687 homicide investigations, and three months later saying it had only opened 997 investigations. In these cases, only 343 suspects have been charged. And according to statistics provided to Human Rights Watch by the federal judiciary in response to a public information request, federal judges have only convicted defendants for 22 homicides tied to organized crime.

Pressed as to why convictions are so rare, justice officials offer a range of explanations: an overwhelming caseload; the complexity and danger inherent in building cases tied to organized crime; and the ambiguity as to whether homicides fall within state or federal jurisdiction, among others. Yet several prosecutors confided to Human Rights Watch that one of the greatest obstacles to effectively investigating and prosecuting such cases is the litany of abuses committed by soldiers and police. Not only do security forces tend to contaminate and manipulate crime scenes, justice officials said, but they also hand over detainees to prosecutors with little more than a confession, which investigators later learn was extracted through beatings, threats, or other violations. As such, prosecutors can either turn a blind eye to likely abuses, building their cases on confessions obtained through violating suspects’ rights, or they can discard tainted evidence and confessions and start their own investigations from scratch.

Abusive policing also undermines civilians’ trust in the security forces, which is critical to gathering the information—such as tips on illicit activities—that is essential for effective law enforcement. President Calderón has appealed repeatedly to citizens to collaborate with the government by reporting crimes. But the confidence upon which cooperation is built must be earned, and many Mexicans do not believe the crimes they report will be adequately investigated, or fear that local law enforcement and justice departments may be infiltrated by organized crime. When coupled with the widespread abuses committed by security forces, which further deepen the public’s disillusionment, it comes as little surprise that many civilians see greater risk in reporting crimes than in staying silent.

This distrust is reflected by the low numbers of both human rights violations and crimes that citizens report to authorities. Prosecutors and human rights officials consistently told Human Rights Watch that only a tiny fraction of victims report abuses, due to a combination of fear and lack of confidence in authorities. A representative of the Chihuahua State Human Rights Commission in Ciudad Juárez, for example, estimates that only one in ten victims of military abuses registers a complaint with his office. And civilians who do not report human rights violations are equally unlikely to report crimes, he added. Meanwhile, national surveys have found that nearly 90 percent of crimes in Mexico go unreported. The lack of reporting, in turn, feeds a cycle of impunity that protects perpetrators and fosters more crime.



## II. RECOMMENDATIONS FOR THE US GOVERNMENT

### The Merida Initiative and Human Rights Requirements

The United States has appropriated more than \$1.6 billion in security assistance to Mexico since 2007 through the Mérida Initiative, a multi-year US assistance package to help combat organized crime. From the outset, the US Congress mandated by law that 15 percent of select Mérida funds be withheld annually until the State Department issued a report affirming that Mexico was meeting four basic human rights requirements. These requirements include investigating and prosecuting military officers accused of committing abuses against civilians in the civilian justice system; prohibiting the use of testimony obtained through torture or other ill-treatment; and improving police transparency and accountability.

It is critical that the US Congress keep these requirements in place in future installments of the Mérida Initiative. The funds pegged to the requirements account for a small portion of overall Mérida assistance. Nevertheless, the requirements provide a critical opportunity to measure Mexico's human rights progress, and to pressure the Mexican government to address abusive practices.

In order to maximize the effectiveness of these requirements in improving Mexico's human rights performance, they must be enforced. Yet despite clear evidence that the requirements have not been met—including reports by the State Department that document the ongoing use of torture and the continued investigation of soldiers in the military justice system for human rights abuses—the US has repeatedly released the conditioned funds.

The findings of Human Rights Watch—together with the research of Mexico's own National Human Rights Commission, respected international bodies such as the UN Working Group on Enforced Disappearances, and Mexican human rights groups—demonstrate beyond a doubt that the Merida requirements are still not being fulfilled. As such, the State Department should explicitly acknowledge in its forthcoming report on the requirements to the US Congress—due in the coming months—that the Mexican government is not fulfilling these requirements. Upon receiving this report, the US Congress should withhold the select funds for the military and police until all four of the requirements are met.

There is a clear precedent that demonstrates withholding US funds can help press for improvements in Mexico's human rights performance. Although the US Congress has never withheld the 15 percent of conditioned Merida funds, in September 2010 the State Department withheld \$26 million in aid to Mexico, making its delivery contingent on two benchmarks: the passage of human rights reforms to the Mexican Constitution, and the proposal of legislation to reform the Military Code of Justice. Shortly thereafter, Mexico's Congress passed the human rights reforms to the Constitution. Then Calderón sent Congress a proposal to reform military jurisdiction which, while deeply flawed, was the first reform initiative of its kind.

## **The Next Phase of the Merida Initiative: Vetting Local Partners**

In August 2011, Assistant Secretary of State William Brownfield of the Bureau of International Narcotics and Law Enforcement Affairs (INCLE) announced that the next phase the Merida Initiative would include direct aid to Mexico's state and local governments and law enforcement bodies. Speaking in Ciudad Juarez, Chihuahua, Brownfield spoke of "a transition process in the Merida Initiative," whereby "cooperation should proceed to the next level, which is the level of states and municipalities." (Previous Merida assistance, by contrast, has been directed almost entirely to Mexico's federal institutions, such as the Armed Forces and Federal Attorney General's Office.)

There is no question that Mexico's local institutions—such as municipal police departments and state prosecutors' offices—are in dire need of training and resources. Indeed, the US can play a constructive role in strengthening these institutions, which are critical to building the rule of law. That said, providing such assistance carries with it the responsibility to choose partners carefully, and ensure that the US is investing in trustworthy and rights-respecting institutions. Therefore, it is critical that the US government develop thorough vetting procedures to ensure that potential recipients of US aid do not have a track record of committing grave human rights violations and enjoying full impunity.

That means taking a hard look at police departments like that of Ciudad Juarez, where Brownfield announced the next phase of the Merida Initiative. Juarez's police chief, Julian Leyzaola, has been found to have participated directly in the torture of detainees—according to in-depth investigations by Mexico's national and state human rights commissions and Human Rights Watch—crimes that have yet to be adequately investigated by prosecutors. In one of these cases, for example, a victim said Leyzaola was not only present when torture was carried out, but himself personally asphyxiated him by placing a plastic bag over his head and punching him repeatedly in the face. And there is strong evidence that police officers in Ciudad Juarez have carried out extrajudicial executions during Leyzaola's tenure.

Aiding police departments like Leyzaola's would not only violate US laws, which prohibit financing security forces known to have committed human rights violations, but would also undermine the effectiveness of efforts to combat cartels. Each time that civilians are abused, Mexican security forces contribute to the climate of violence and lawlessness in which criminal groups thrive. Worse, crimes against civilians undercut public trust and cooperation, both of which are vital to effective counternarcotics operations.

## **The US Role: Shared Responsibility and Speaking to Abuses**

The increasing power of Mexican mafias is not of Mexico's making alone. As the source of many of the high-powered weapons that are used by cartels, and as the market for the lion's share of the drugs trafficked by criminal groups (and thus a significant part of the income they earn), the US shares responsibility for the crisis in Mexico and the power of these criminal groups. As a result, the US government, and particularly the US Congress, should redouble its efforts to halt the illegal flow of weapons into Mexico, as well as put in place public policies that reduce the demand for narcotics in the US.

The Obama administration deserves credit for recognizing the United States' shared responsibility for these problems. However, the administration has failed on multiple occasions to raise concerns about the widespread human rights abuses being perpetrated by Mexican security forces. Instead, President Obama has consistently applauded the Calderón administration's efforts to tackle cartels. For example, following an April 2012 meeting with Calderón, Obama praised the Mexican president's "great courage in standing up to the traffickers and cartels," while making no mention of the widespread abuses committed by Mexican soldiers and police. In fact, Obama has never publicly expressed concern about this serious problem. On only one occasion has a ranking member of his administration spoken to the problem of military impunity: in January 2011, Secretary of State Hillary Clinton advocated for soldiers alleged to have committed abuses against civilians to be investigated and prosecuted in civilian jurisdiction.

The failure to publicly acknowledge this problem is extremely short-sighted, and cuts against the national security interests of both the US and Mexico. Being a good ally in the struggle against organized crime is not about turning a blind eye to the horrific crimes committed by the Mexican military and police. Rather, it is about candidly and rigorously assessing the public security strategy's successes and failures, in order to build an effective, law-abiding effort that can tackle sophisticated criminal networks.

This hearing marks an important opportunity for the US government to acknowledge the human rights crisis faced by Mexico today. In light of the serious problems we have highlighted, it is imperative that the US Congress, the Obama administration, and the State Department use their leverage to press Mexico to address the widespread human rights violations and rampant impunity that have marked the Calderón government's efforts to combat organized crime.

Thank you.