

Testimony of Joy Olson
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on the Merida Initiative

before the

House Appropriations Committee
Subcommittee on State, Foreign Operations and Related Programs

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My name is Joy Olson and I am the Executive Director of the Washington Office on Latin America (WOLA). I have close ties to Mexico. My daughter is a Mexican citizen and I have a master's degree in Latin American Studies from the National Autonomous University of Mexico (UNAM). I have followed U.S. security assistance to Mexico for more than ten years as part of the "Just the Facts" project. WOLA has studied the drug trade and U.S. drug policy in Latin America for more than 20 years. WOLA's newest program addresses the issue of organized crime from a human rights perspective, viewing organized crime as a viable threat to democracy and the rule of law.

As excellent background for this hearing, I ask that you include for the record a publication entitled, *At a Crossroads: Drug Trafficking Violence and the Mexican State*, written by WOLA Associate Maureen Meyer, and published by WOLA and the Beckley Foundation Drug Policy Programme.

WOLA has followed closely the development of the Merida Initiative and consulted extensively with colleagues in Mexico with a variety of expertise including: human rights, constitutional law, judicial reform, policing and the military. These discussions, which continue, have informed our view of the Merida Initiative.

The U.S. can most effectively address drug trafficking and violence in Mexico in three ways, by:

- 1) launching an ambitious effort to reduce demand for drugs here at home, in particular through improved access to high-quality drug treatment;
 - 2) combating the flow of arms and illicit drug profits from the US into Mexico;
- and
- 3) supporting institutional reforms in Mexico's police and judicial systems that can lead to the rights respecting arrest and prosecution of drug traffickers.

My testimony will focus on the last point, where the resources appropriated by this subcommittee might have the most impact.

WHERE WE ARE

In spite of president Calderon's large-scale efforts to combat organized crime, there has been a dramatic increase in drug-related violence in Mexico since the beginning of his administration in December 2006. It is estimated that there were over 6,000 drug-related killings in 2008 and more than 1,000 people were killed in the first two months of 2009. The recent arrests of several government officials for passing on information to drug-trafficking organizations, reports of campaign financing by drug traffickers in state and local elections, and widespread corruption among federal, state and local police agents illustrate the penetration of drug trafficking into state structures and the daunting challenges faced by the Mexican government to effectively address the security crisis in the country.

As the State Department's 2008 Human Rights Report indicates, there is corruption, inefficiency, and lack of transparency in the Mexican judicial system, as well as "impunity and corruption at all levels of government".¹ The Mexican Citizen Institute for Research on Insecurity's (INCESI) estimates that only one out of every five crimes are ever reported. Initial investigations are begun for only 13% of the crimes reported and in only 5% of these crimes are the alleged perpetrator brought before a judge.² Widespread police abuse also contributes to a lack of trust of the civilian population of their law enforcement institutions.

To respond to this crisis, the Calderon Administration has enacted a series of initiatives to strengthen its public security institution such as efforts to professionalize and purge the federal, state and local police and financial support to the 150 Mexican municipalities most affected by crime and violence. Nonetheless, the predominant element of Mexico's security strategy continues to be large-scale counter-drug operations which have been launched throughout Mexico. The military dominates these operations with the participation of approximately 45,000 soldiers, and the Mexican military is increasingly becoming involved in other public security tasks. In the most recent stage of the Joint Operation in Chihuahua, an additional 7,000 soldiers were sent to Ciudad Juarez in early March and personnel from Mexico's Defense Ministry (*Secretaría de Defensa Nacional*, Sedena) took charge over the municipal Public Security Ministry, the local prison and traffic office.³ Although Mexico's National Human Rights Program establishes the objective of progressively removing the armed forces from public security tasks linked to organized crime, there are no clear signs that this is taking place and human rights violations perpetrated by military personnel have dramatically increased.

¹ 2008 Human Rights Report: Mexico, Bureau of Democracy, Human Rights, and Labor 2008 Country Reports on Human Rights Practices

² *Instituto Ciudadano de Estudios sobre la Inseguridad*, "Fifth National Survey on Insecurity", 2007. <http://www.icesi.org.mx/documentos/encuestas/encuestasNacionales/ENSI-5.pdf>

³ Cano, Luis Carlos, *Militares controlan funciones municipales*, El Universal, March 4, 2009.

HOW WE GOT HERE

Mexico did not get to this point overnight, and the tactics being used to confront the drug trade - purging the police and bringing in the military - are not new. Efforts to purge the influence of drug trafficking on the Mexican police go back at least to the 1980's and the presidency of Miguel de la Madrid. Subsequently, President Salinas de Gortari set up the Center for Drug Control Planning (Cendro) and the National Institute to Combat Drugs and declared drugs a national security threat, leading to the expansion of the military's involvement in counter-drug activities. President Zedillo continued expanding the use of the military, substituted Federal Judicial Police with members of the army and placed high-ranking military officials within civilian law enforcement agencies. More attempts at police reform were made in the Zedillo and Fox administrations. June of 2005 saw "Operation Safe Mexico" which included the deployment of large numbers of troops to combat drug-related violence and corruption in Tamaulipas, Baja California and Sinaloa, and was later expanded to Michoacán, the State of Mexico, Guerrero and Chiapas. One of the perceived intentions of this operation was to purge municipal police corps of corrupt agents. Indeed, when the federal police and military arrived in Nuevo Laredo as part of the operation they removed the 700 municipal police officers from their posts and investigated for corruption.⁴ Less than half were cleared to return yet corruption continues to be widespread among Mexico's state and municipal police forces.

History is important here- as is illustrated above, there have been many past efforts to purge Mexico's police of corrupt agents and create new security agencies, but all have failed to put into place the structural reforms necessary to ensure police accountability and have generated a serious lack of faith in the police and attempts at police reform. Often implicated in crimes and struggling to exhibit legitimate authority, the police and past efforts at reforms are viewed with great cynicism and mistrust by civilians. In public opinion, there is often a fine line between the police and the criminals.

The problem with each police purge was that it was incomplete, and internal and external controls were not put in place to enable the continual ferreting out of corruption. Military deployments are equally problematic. Military and police are not interchangeable entities. Military forces are trained for combat situations, with force used to vanquish an armed enemy. Police are a civilian corps, trained to address threats to public security using the least amount of force possible, to investigate crime and identify those responsible, and to arrest criminals with the cooperation of the people. The military can also only occupy a city for so long. They aren't the police and they are unable to arrest and prosecute the traffickers. Ultimately, they go back to the barracks and the fundamental dynamics don't change.

⁴ Freeman, Laurie, "State of Siege: Drug Related Violence and Corruption in Mexico, unintended consequences of the War on Drugs," WOLA, June 2006.

US-MEXICO SECURITY COOPERATION AND THE MERIDA INITIATIVE

In the first year of Merida Initiative funding, Mexico is receiving \$400 million in security assistance, with an additional \$300 million currently being discussed as part of the FY09 omnibus. Since the first tranche of the money was just released, it is still too soon to assess the impact of this support for Mexico. However, the recognition implicit in the Merida Initiative that Mexico and the United States share responsibility for addressing drug trafficking and violence is important, as are the unprecedented levels of security cooperation between the two countries.

However, WOLA continues to be concerned by the imbalances in the assistance package, which focuses too heavily on hardware and equipment and not enough on support for judicial and police reform and institutional strengthening. Equipment and technology will do little to bring the accountability, transparency and reform that Mexican security forces need to fight criminal groups over the long haul.

Success in Mexico's counter drug efforts will not hinge upon helicopters or ion scanners. These may contribute to tactical victories, but ion scanners are only useful if those who use them are not corrupt. An increased number of detained drug traffickers is also ineffective unless there is a judiciary who is capable of prosecuting them.

The Merida Initiative also continues to be one-sided. Although the Initiative was pitched in the framework of "cooperation" between the two countries, it contains no additional commitments or funds for actions to be taken on the US side of the border. Many studies have shown that treatment for heavy drug users is by far the most cost-effective way to reduce problem drug use and yet treatment in the U.S. has remained under-funded, with federal spending on treatment since 2002 growing at less than half the rate as spending on source-country programs and less than one-quarter the rate of spending on interdiction. Efforts to curb firearms traffic into Mexico continue to fall short and when developed, are done in isolation of US security assistance for Mexico. Now is the time for coordinated budget priorities that integrally address the security crisis along the US-Mexico border. Any next stage for the Merida Initiative should contain a truly bi-national plan of action.

What is clear in Mexico is that the security situation continues to deteriorate and although rampant violence remains concentrated in select border cities, insecurity and the infiltration of drug traffickers into more Mexican towns and institutions is an increasing concern. The platitudes that "increased violence means that the state is winning," and "things will get worse before they get better" are getting stale, leading to the question - what more needs to be done?

Compared to what the Mexican government is investing in counter drug efforts, the U.S. contribution is a drop in the bucket. The aid we give this year or next is not what will turn this situation around. It is a change in police and judicial institutions that will make a difference and that is where the limited U.S. dollars should be spent. What the U.S. decides to fund signals what we think is important. Strong, effective, rights respecting

institutions and the rule of law have the best chance of addressing the problems of insecurity, violence and corruption in the country.

POLICE REFORM

A lack of accountability and corruption in the Mexican police forces plagues the public security system. A January 2009 tally by the Mexican newspaper *Reforma* reports that in 2008, 759 police in 16 states were arrested, most of them due to ties to drug trafficking organizations.⁵ Operation Clean-up (*Operativo Limpieza*), launched by Mexico's Attorney General's Office (*Procuraduría General de la República*, PGR), has detained numerous Mexican officials for their links to organized crime, including members of the President's security team, the former director and other agents from the federal organized crime unit (SIEDO), and two former directors of Interpol Mexico's office.

The Calderon administration has adopted several measures to vet Mexico's police forces and establish centers (*centros de control de confianza*) that have begun to carry out annual reviews of police performance utilizing a series of evaluations. President Calderón has stated that between January and October 2008 the Office of Control and Confidence within the Public Security Ministry (*Secretaría de Seguridad Pública*, SSP) evaluated 56,065 officers, which is approximately 15% of the police in Mexico. These police were primarily state and municipal police from the Subsidy for the Municipal Public Security (SUBSEMUN) program and various programs within the Federal Preventive Police (PFP). Of the police evaluated, 41.7% were found to be "commendable," and 49.4% were "not commendable."⁶ President Calderón did not provide information on what procedures were undertaken for those police who were "not commendable" and whether these police officers remain in service. To date we have been unable to obtain specific information on this issue.

Information is lacking in order to fully assess the effectiveness of these centers and there is a risk that, like past efforts, they will never be fully operational or will lack the follow-up necessary to be effective. Experts on policing in Mexico have affirmed that there is interest among Mexican police institutions to improve aspects such as recruitment criteria, training and creating more standardized hiring and promotion procedures. However priorities are not focused on establishing or strengthening internal and external accountability measures. Significant political will is necessary to implement mechanisms designed to combat corruption and curtail police abuses.

US policymakers should explore ways for the United States to support and strengthen Mexico's efforts to evaluate police performance at the federal, state and local levels. This should ensure that there are mechanisms in place to investigate, sanction or retrain police who do not "pass" the performance evaluations being implemented by the government.

⁵ "Detienen a 759 policías ligados al narco en 2008," *Reforma*, January 6, 2009.

⁶ Pregunta No. 6, Partido Acción Nacional, *Respuestas a las preguntas formuladas en relación con el Segundo Informe de Gobierno*. <http://gaceta.diputados.gob.mx/Gaceta/60/2008/nov/2PAN.pdf>

Likewise, Mexico's National Registry of Police Personal is not fully functional and consulting this registry to hire police at the state and municipal level is only done erratically. Without a complete national police registry and an established consultation mechanism, there is no way to ensure the service record, educational background, places of employment, etc. of the police (federal, state and local), impeding thorough background checks and vetting processes. This is essential so that police sanctioned or removed because of corruption or abuse from one entity are not simply rehired by another. The first year of the Merida Initiative provides \$3 million to assist Mexico in making its national police registry fully operational. Before additional US assistance is provided to Mexico's police forces, the progress made by the Mexican government to complete and fully apply the police registry should be assessed. A functioning police registry should be a minimal benchmark for assessing the seriousness of institutional reform.

JUDICIAL REFORMS

The police are part of a larger set of criminal justice institutions. The persistence of corruption and impunity within the Mexican criminal justice system encourages police to take matters into their own hands, and contributes to a lack of trust in the justice system, legal bodies and police forces. An effective system would ensure efficient investigations and adequate collection of evidence while respecting due process guarantees. A reformed criminal justice system would also increase citizen trust, leading to a greater willingness to report crimes and offer evidence.

Historic constitutional reforms to Mexico's justice system were approved in 2008. These judicial reforms represent an authentic procedural revolution of the judicial system, including conducting oral trials and opening up alternative means of conflict resolution in criminal procedures. In sum, they aim to strengthen the rule of law in the country and put pressure on law enforcement agents to carry out more professional investigations, as well as address corruption. It is expected that these reforms will reduce the level of impunity for crimes, which is currently estimated to be around 96%.⁷ Furthermore, the implementation of oral trials should in principle reduce the likelihood of testimony obtained through torture of being admitted in legal proceedings. Torture is still a problem in Mexico. This year's State Department Human Rights Report says, "...cruel treatment and physical abuse in particular continued to be a serious problem, particularly among state and local law enforcement elements."

The breadth of Mexico's transition from an inquisitorial to an adversarial judicial system, including oral trials, implies an overhaul of the Mexican judiciary. As such, a transition period of up to eight years has been established for these reforms to be fully in force at the federal as well as state level.

⁷ A study by the Mexican Citizen's Institute for Research on Insecurity (INCESI) indicates that only 4 out of every 100 people accused of crimes are convicted. If one takes into consideration the number of crimes never reported, the rate of impunity is even higher.

http://www.icesi.org.mx/icesi_hoy/impunidad_en_mexico.asp

The United States government has been a firm supporter of judicial reform in Mexico, particularly through USAID Mexico's rule of law program, which has been important in promoting judicial reforms in several states such as Chihuahua and Oaxaca. US policy makers should provide additional funding for Mexico to support judicial reform undertaken at the federal and state levels. Possible support could include funding for: revamping law school curriculums and text books; exchange programs for judges and lawyers to countries experiencing similar changes; programs to strengthen Mexico's judicial work in the areas of evidence handling and chain of custody and for equipment and training for expert services (ballistics, criminology); and Victim and Witness Protection and Restitution programs as an essential component for effective criminal investigations.

SUPPORT FOR HUMAN RIGHTS IS IMPORTANT

Drug trafficking and violence in Mexico are a serious problem and we believe that the U.S. must be a part of the response, but *OJO*, as they say in Spanish, or watch out, because you are giving security assistance to unreformed and un-transparent security forces. The U.S. has a bad track-record of providing assistance to unreformed security forces that in turn commit human rights abuses in which the U.S. is implicated.

The human rights reporting requirements in the Merida Initiative should not be viewed as simple window dressing. Human rights abuses continue to be widespread in Mexico. While the majority of the perpetrators of human rights violations are state and local police, there has been a disturbingly dramatic rise in reported human rights violations perpetrated by military personnel during the Calderón administration and in relation to the military's role in the drug war.

The number of complaints filed against Mexico's Department of Defense (Sedena) before the Mexico's National Human Rights Commission (CNDH) more than doubled during the first year of the Calderón administration, going from 182 in 2006 to 367 in 2007. In 2008, the CNDH received 1,231 complaints of human rights abuses by members of the military⁸, resulting in 13 recommendations, particularly regarding violations against civilians such as torture, arbitrary detentions and sexual abuse.⁹ The majority of these violations occurred as a result of the military's deployment in counter-drug operations throughout the country. Several cases involve the unlawful death of civilians, whose vehicles failed to stop at military checkpoints, including several minors¹⁰ and illegal detentions, searches, and acts of torture and sexual abuse that occurred in counter-drug operations in the state of Michoacán in May 2007.¹¹

⁸ Comisión Nacional de Derechos Humanos, "Informe anual de actividades" 2008, pg. 36.

⁹ "Recibe el Ejército el mayor número de quejas: CNDH", *Milenio*, December 26, 2008, <http://www.milenio.com/node/137794>

¹⁰ For example CNDH Recommendations 34/2008 and 40/2007

¹¹ Recommendations 38/2007 and 39/2007

Because most cases of human rights abuses committed by members of the military against civilians are remitted to military jurisdiction, those responsible are seldom punished. In fact, although over 700 investigations were opened against members of the military for crimes such as bodily injury and homicide from 2000-2008, only 10 soldiers have been sentenced.¹² We know of only one case in which civilian authorities assumed the investigation and prosecution of members of the military, involving the rape of a group of women in Castaños, Coahuila in 2006. The lack of objectivity, transparency, and independence that characterizes the military justice system's investigation into abuses committed by members of the military fosters a climate of entrenched impunity.

The 15% withholding that Congress has required until the State Department reports that Mexico is making progress in four human rights related areas: transparency and accountability within the federal police; consultations with civil society; investigations and prosecutions of security forces accused on abuse; and enforcement of Mexican law prohibiting the use of testimony obtained through torture is completely appropriate and important. Congress should also monitor the State Department's implementation of the Leahy Law.

CONCLUSION

No matter what Mexico does, it will remain stuck between cocaine production in the Andes and drug users in the United States. It continues to be a significant source of the marijuana, heroin and methamphetamines consumed in the United States and now has a growing population of drug consumers itself. Drug trafficking, consumption, and organized crime are serious problems shared by the U.S. and Mexico and require common remedies. The U.S. should start by developing a U.S. component to the Merida Initiative detailing what we will do here to reduce consumption, bulk cash transfers and arms trafficking.

Drug traffickers in Mexico are committing horrendous crimes. To contain the drug trade, traffickers must be identified, prosecuted and punished, and prevented from carrying out their illegal activities from behind bars. Effective police and judiciaries, free from corruption, are essential in achieving that end. Transparency and accountability, and internal and external controls (mechanisms for routing out corruption and abuse) in security forces are mechanisms for preventing human rights violations and holding abusers responsible for their actions. Police and justice reform, holding criminals accountable and human rights in Mexico should all go hand-in-hand. Those are the areas where U.S. should prioritize support through the Merida initiative.

Lastly, I want to say a few words about the Central America component of the Merida Initiative. The Initiative recognizes that the violence and the crime experienced in Central America is not only about drugs. Violence related to drug trafficking is a serious problem in the region, especially along the borders, and the Atlantic coast. In addition

¹² Aranda, Jesus, *Se disparan las denuncias por lesiones u homicidios cometidos por militares*, La Jornada, January 19, 2009.

though, youth gang violence has been a serious problem in Guatemala, Honduras and El Salvador for a number of years and while there are at times connections between drug traffickers and youth gangs, they are not one and the same. All the experts agree that any serious strategy to reduce youth violence must include community-based prevention programs along with law enforcement. Yet prevention programs in Central America are chronically under funded.

After Congress revised the Administration's first year's funding request for Merida, the 09 supplemental allocated serious resources, \$20 million for prevention and related social and economic development activities in Central America. However, how much of the FY 2009 funding will support prevention is unclear. We renew our recommendation that approximately a third of Merida funding ought to be devoted to violence prevention programs. We respectfully request that the committee encourage the administration to maintain a serious commitment to youth violence prevention and we recommend that 2010 funding for Merida on Central America reflect this commitment as well. Ultimately, these kinds of programs need to be supported by national governments. We hope that the U.S. encourages such a shift, encouraging Central American governments to adopt and fund these efforts out of national budgets as the Merida funding comes to an end.