

The Merida Initiative U.S. Responsibilities & Human Rights

**Testimony presented by Lisa Haugaard, Director, Latin America Working Group
to the House Committee on Appropriations Subcommittee on State, Foreign Operations,
and Related Programs**

Thank you, Chairwoman Lowey, Ranking Member Granger and all the members of this subcommittee, for the opportunity to share perspectives on this important issue.

Day after day we hear nightmarish stories of gangland slayings in Mexico, as drug-related violence expands, affecting the lives of countless families and communities across Mexico, as well as the U.S-Mexico border region. Mexico's Attorney General estimates that rival drug cartels killed 6,262 people in 2008, including 522 civilian law enforcement and military personnel.¹ The United States must respond, however, in a strategic, careful way that addresses the underlying causes of the violence.

I am going to outline some ways in which the U.S. must shoulder its own responsibilities for the violence, and then suggest ways in which the United States can ensure its aid and policies support strengthening respect for human rights.

I. The United States must address its own contribution to the violence.

U.S. foreign policy agencies and congressional subcommittees are tasked with responding to the severe damage in Latin America created by illicit drug trade. But the main solutions do not reside in foreign policy but in domestic policy. Above all, the United States simply must take effective action to reduce the demand for illicit drugs. There has been greater rhetorical support for the need for the United States to get its own house in order in the discussion around the Merida package, and this is welcome. But the Congress and the administration need to develop comprehensive solutions and put funding, programs and policies behind these rhetorical acknowledgements. And that will require working in new ways that bridge the domestic/foreign policy jurisdictional divide.

The core of an effective U.S. strategy is improving access to high-quality drug treatment programs, with expansion of services as well as research. Each year barely one-fifth of the Americans in need of such treatment receive it.² Budgets for treatment, as well as prevention, are inadequate; indeed, in the FY09 request, prevention programs were cut by 25 percent compared to the previous year. Expanding and improving treatment and prevention would be the single most important contribution that the U.S. government could make in addressing the problem caused by the illicit drug trade in Mexico and Central America. Any U.S. aid package, however well designed, will not solve the problem but at best temporarily shift it, after enormous human suffering, to another geographical area. We owe it to our neighbors and to ourselves to finally test out more effective and humane public health solutions to this enduring problem.

The United States must also do its part to curb the "iron river" of assault weapons into Mexico.³ Drug gangs using assault-style weapons are murdering Mexican citizens, including law enforcement officials, with ruthless efficiency. According to the U.S. Bureau of Alcohol,

Tobacco, Firearms and Explosives (ATF), 90 percent of the weapons confiscated from organized crime in Mexico originate in the United States.⁴ Mexico's Attorney General, Eduardo Medina Mora, recently asserted: "The three highest priorities for me in terms of U.S. cooperation are these: guns, guns, guns. These drug groups intimidate society and government because of their firepower. And their firepower comes from the U.S."⁵ The solutions are fairly well defined—we just need to muster the political will to accomplish them. They include:

- Resuming enforcement of the ban on importing assault weapons, fully manufactured abroad as well as imported in parts, as was carried out under the administrations of Presidents Clinton and George H.W. Bush. This was recently called for by 53 members of the House, including some members of this subcommittee.⁶
- Strengthening the ATF's oversight and inspection capabilities, particularly in the U.S.-Mexico border region, including programs targeting noncompliant federally licensed firearms dealers, straw purchasers and arms traffickers. Many of the guns ending up in the hands of Mexican cartels originate in four border states, Texas, California, Arizona and New Mexico.⁷
- Enforcing existing regulations assertively to limit the "straw purchases" of arms, often at gun shows. Drug traffickers enlist Americans with clean records to purchase and transport a few guns at a time across the border in a "parade of ants" to arm the cartels.⁸
- Instituting an effective ban on the sale of assault weapons in the United States. It was encouraging to hear Attorney General Eric Holder indicate that a reinstatement of the ban, which expired in 2004, is under consideration.
- Requiring that ammunition be sold through licensed dealers, with background checks.
- Expanding resources to enhance prosecutorial efforts targeting gun smuggling crimes.
- Senate ratification of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials," which promotes the exchange of information, cooperation, and training to control illegal weapons, and is already ratified by most OAS members, including Mexico.⁹

As well as expanding drug treatment and increasing enforcement over weapons smuggling, the United States should meet its share of responsibility by strengthening existing efforts to investigate and prosecute money laundering and bulk cash transfers.

II. The United States should not encourage and support an open-ended role for the Mexican military in domestic law enforcement.

President Calderón has mobilized 27,000 army troops and federal policemen in joint operations in ten states. Just last week, approximately 3,200 additional troops were placed on the streets of Ciudad Juárez, for a total of over 8,000 soldiers and law enforcement officials in the city.¹⁰ In certain areas, soldiers are patrolling streets, operating highway checkpoints and conducting searches and other operations. The Mexican government justifies its use of the military in counternarcotics efforts by citing that police forces are too weak and corrupt to effectively combat organized crime. Although police forces, particularly municipal and state, are wholly inadequate, this only reinforces the urgent need to focus on measures to reform and professionalize civilian law enforcement.

National and international human rights leaders, including United Nations Human Rights Commissioner Louise Arbour, have called on President Calderón to return soldiers to their barracks. President Calderón has described military involvement as a temporary measure, referring to a plan to withdraw the military from domestic law enforcement.¹¹ However, the Mexican government has not released a specific plan or timetable to withdraw the military from public security.¹² The United States should not provide support for a military role in domestic law enforcement and should encourage the Mexican government to make clear its exit strategy for withdrawing the military from public security.

The growing role of the Mexican military in public security is resulting in increased human rights violations against the civilian population. This is reflected in the rising number of complaints filed against Mexico's Department of Defense (SEDENA) before the National Human Rights Commission, which more than doubled during the first year of the Calderón administration, rising from 182 in 2006 to 367 in 2007. In 2008, the CNDH received 631 complaints of human rights abuses by members of the military. Between January 2007 and December 2008, the National Human Rights Commission issued an unprecedented 19 recommendations to SEDENA regarding human rights abuses committed by members of the armed forces, the majority for violations that occurred in the context of public security tasks.

Particularly troubling are killings of civilians at military checkpoints. For example, the following cases from 2008 alone were cited in the State Department's most recent Human Rights Report:

- On January 11, soldiers from the 12th infantry battalion in Michoacan allegedly opened fire on a pick-up truck, killing a minor and injuring an adult passenger. According to the Human Rights Commission in Michoacan, the National Defense Secretariat (SEDENA) awarded civil damages to the family of the deceased victim; the criminal case against the soldier involved remained under investigation.
- On February 16, soldiers at the gate of a military installation in Reynosa, Tamaulipas, opened fire on a vehicle that failed to stop at a checkpoint, killing the driver and injuring a passenger. SEDENA assumed responsibility for investigating the case; no further information was available at year's end.
- On March 26, soldiers at a checkpoint in Badiraguato, Sinaloa, allegedly opened fire on a group of civilians, killing four and injuring another. On April 11, SEDENA announced the arrest of five army officials in connection with the case. No further information was available on this case at year's end.
- The CNDH announced an investigation into an incident that occurred on June 8, when military officials in Chihuahua opened fire against a vehicle. Allegedly, the vehicle had failed to stop at a military checkpoint and ran over a soldier when its brakes failed. As a result of this incident, four persons died, including two occupants of the vehicle, one soldier, and another civilian who was near the area. SEDENA maintained that it had found weapons inside the vehicle and was investigating the case at year's end.
- On July 22, soldiers in the state of Aguascalientes shot and killed 17-year-old Guillermo Soto Garcia as he was traveling in a vehicle with three other teenagers. The Aguascalientes Attorney General's Office was investigating the case at year's end.¹³

To give a sense of what it means to live with such a military presence in law enforcement, here are some tips from the manual that municipal authorities in Ciudad Juárez just handed out to its citizens. The manual recommended that when approaching a checkpoint, you turn on your

interior car light and turn on and off your headlights to indicate to the soldiers that you will be obeying them. Put your hands on the top of the steering wheel, only carry in your car the items that you need, and carry official identification at all times. At night, keep your interior lights on and your windows rolled down.¹⁴

In another disturbing case, in May 2007 in the area of Carácuaro, Nocupétaro and Huetamo in Michoacán state, following an ambush in which five soldiers were killed, more than 1,000 soldiers were deployed for three days, during which time numerous cases of torture were reported and four minor girls were allegedly sexually abused by soldiers.¹⁵

Abuses by members of the military are not effectively investigated and prosecuted, resulting in impunity in such cases. Despite an article in the Constitution establishing that crimes against civilians by members of the military correspond to civilian institutions,¹⁶ almost no such crimes are tried in civilian courts.¹⁷ Mexico's Defense Secretary recently publicly reaffirmed that these cases would remain in military courts. Major Mexican human rights groups assert that "the use of military jurisdiction to investigate and prosecute grave human rights violations worsens the situation of impunity in Mexico and is contrary to international standards and innumerable recommendations to the Mexican State made by organisms of human rights protection."¹⁸ SEDENA is notoriously opaque, and little information is made available regarding status of cases within the military system.

One of our concerns in commenting on the Merida package from the start is that although foreign operations subcommittees approved only limited military equipment, the discussion around the plan appeared to open the door to further largely untransparent and unaccountable aid through the Defense Department. The U.S. government will not have a coherent policy with the Merida Initiative if substantial military aid flows through Defense Department authorities, without oversight of the State Department and this subcommittee and its Senate counterpart.

In sum, it is important that the Mexican government clarify the details of its plan to withdraw the military from a public security role, including its plans to reform, strengthen and professionalize civilian law enforcement institutions. U.S. aid should be conceived as helping to support this transition, rather than reinforcing the armed forces' public security role.

The Merida Initiative of course will have to take into account and seek to encourage reforms to address the very serious human rights abuses committed by police. Three persistent problems are the use of torture to elicit confessions, despite existing prohibitions; the use of lengthy pre-trial detention; and the excessive use of force and grave human rights abuses in confronting social protests, with extreme examples such as the police response to the 2006 Oaxaca protests, and the flower growers' 2006 protest in San Salvador Atenco, in which two flower growers were killed, some 47 women detained and many detainees were allegedly raped and tortured.

III. Solutions to the spillover of violence across the border must incorporate the concerns of border state communities.

Concern about spillover from the violence in Mexico has led to calls for deploying National Guard and soldiers in the border area. However, a number of elected officials and community

leaders from the border region have expressed opposition to the deployment of soldiers on the border. The dangers associated with the deployment of the military in the border region are illustrated by the 1997 incident in which an unarmed high school student in Redford, Texas was shot and killed while herding sheep by a U.S. Marine engaged in a training mission.

Another reaction to potential for spillover has been calls for completing the border fence. However, there is long-standing opposition to this plan from border communities. Eight border state members of Congress recently called for a temporary suspension of fencing while border security operations are evaluated, and have asked for community consultation on such projects, including by tribal nations whose land is affected.¹⁹ Rather than focusing on deployment of soldiers or fencing, a number of border state officials have called instead for a more strategic targeting of state and federal resources, such as increases in staffing (particularly inspectors) and improvements in technology and infrastructure at ports of entry to improve screening capabilities. This could enhance security while reducing wait times and allowing for the flow of goods and persons necessary to the local economies on both sides of the border.

The concerns and first-hand perspectives of elected officials, law enforcement officials and community stakeholders from the border region must be taken into consideration in the design and oversight of border enforcement measures and the national debate over responses to the violence in Mexico.

IV. Human rights must be central to U.S. policy.

As the United States continues what is already a multi-year, substantial aid package to Mexico and Central America, it is essential to make human rights an integral part of aid and diplomatic policy. This is not a peripheral concern. Without explicit attention to human rights, U.S. assistance will not contribute to strengthening the rule of law and ending the cycle of violence.

But this is a lot harder to put in actual practice than to merely express rhetorically. I am going to refer to another recent experience, the decade-long aid package to Colombia, in order to draw out some lessons about how to apply human rights criteria, particularly to Mexico. In doing this, I am in no way saying that the situation of the two countries is remotely comparable or indeed that the human rights situation in Mexico is similar to the situation in Colombia. Rather, it is a reflection of how the United States government can take into consideration, or fail to take into consideration, human rights in these kinds of partnerships.

Lesson 1. Human rights training can be helpful, but is by no means sufficient

The U.S. government tends to conceptualize human rights as including human rights training for security forces or otherwise budgeting funding for human rights activities. When the United States launched Plan Colombia, later called the Andean Counternarcotics Initiative, in 2000, the Clinton Administration responded to human rights groups' concerns by promising that human rights training would be incorporated into military training. And indeed, the U.S. and the Colombian governments made good on this promise and incorporated such training broadly, including by institutionalizing such training through "train the trainer" courses.

And yet, Colombia's major human rights groups documented 955 extrajudicial killings allegedly committed by the Colombian armed forces between July 2002 and June 2007, compared with 577 over the previous five-year period. All over the country, soldiers were seen detaining people in civilian clothing, who later turned up dead in guerrilla uniforms, claimed by the army as killed in combat. In October 2008, this scandal splashed all over the front pages of Colombia's papers, when it was revealed that an organized ring of soldiers were working with paramilitaries who were recruiting young men, staging mock battles, and killing them, apparently out of purely venal motives. Why had all of the human rights training not prevented such a development?

There's no quarrel with the training itself, and perhaps it curbed other abuses—certainly it was not objectionable. But there are several reasons why training did not solve the problem. First, the training failed to address two structural problems, the existence of monetary incentives for dead combatants which led to a body-count mentality, and a promotion system which rewarded security force officers despite abuses clouding their records. A national policy intended to produce results in the war pressured the military to produce results at any cost. Second, no amount of human rights training can work when the justice system fails to investigate and prosecute crimes committed by security forces. In Colombia as in Mexico today, many of these crimes were being investigated by the military justice system, despite clear jurisprudence that indicated human rights crimes attributed to the military have to be investigated and prosecuted by the civilian justice system. Terrified witnesses had to go on to military bases to speak to military judges, military judges were dismissing cases, and justice was nowhere to be found.

With the Merida Initiative, this lesson must also be applied to the police: including human rights courses is not sufficient. U.S. policy must also pay attention to structural reforms, including reforms to ensure that abuses are investigated and prosecuted; that citizens' complaint bureaus and other oversight mechanisms are fully functional; and that, in the Mexican case with its array of municipal, state and federal police, a comprehensive registry of law enforcement personnel is deployed to ensure that corrupt or abusive officers are not simply dismissed by one agency and then hired by another.

Lesson 2 Judicial assistance is positive, but not sufficient

The Merida Initiative includes substantial judicial assistance and training to strengthen the rule of law, which we support, and indeed we were very glad to see that this focus was incorporated from the start of the package. However, past experience in Colombia as well as Central America indicates that the kinds of assistance and training provided by the U.S. government is helpful, but does not by itself resolve problems of impunity, particularly in regards to difficult cases such as abuses by official security forces. The aid in transitioning to an accusatory justice system and prosecutorial training which the Department of Justice typically provides need to be complemented by an understanding of the specific obstacles to reducing impunity in each country and each judicial agency. Ideally, judicial assistance should be accompanied by benchmarks for reducing impunity produced jointly by the donor and recipient governments with strong input from local human rights groups, the ombudsman's office and, if relevant in a given country, the United Nations High Commissioner for Human Rights local office. USAID can provide assistance to strengthen judicial and oversight agencies that can be more tailored to the specific situation and needs of each agency than the standard DOJ training. Finally, there seems

to be a real problem at INL in getting funding for judicial assistance out the door, if we are to judge by the Colombia experience. That needs to be solved.

Lesson 3 For human rights improvement, diplomacy and dialogue, not just aid and training, is the answer

When the U.S. government initiates these large-scale, multi-year aid packages, it is a natural bureaucratic and human tendency for U.S. government officials to begin to think of the two governments not just as partners but as one entity. Concerns about human rights begin to be blunted and softened, and officials' speeches sing only the praises of our partner, and often the State Department's human rights reports get watered down. Both our highest-level officials and members of Congress meet primarily with the partner government, and human rights and other important civil society leaders get limited access. If the United States government wants to protect human rights, it needs to maintain a little daylight between itself and its partner, it needs to retain a bit of objectivity and a willingness to raise difficult issues, whether publicly or privately. Retaining this willingness to raise difficult issues with a major aid partner seems to be hard for career officers and policymakers to do, and this is a bipartisan problem.

The saving grace in the Colombia experience was the existence of human rights conditions within the package. These did not prevent human rights abuses from occurring but at least provided a way to raise them after the fact. Without the human rights conditions and the willingness of the Congress, particularly the foreign operations subcommittees, to insist that the State Department take the conditions seriously, human rights groups in the United States and Colombia would not have been able to get the attention of the State Department and the U.S. Embassy, and the widescale killings of civilians by the Colombian army would have passed virtually without U.S. comment and probably would have continued unchecked. The conditions helped ensure that the State Department dialogued with the Colombian government about killings of civilians and resulted in the Colombian government transferring cases from the military to the civilian justice system; the dismissal of officers implicated in the scandal; and at least a few high-profile cases resulting in convictions. This problem is far from over; many cases now are still mired in the civilian as well as military justice system; extrajudicial executions continue; increasingly, disappearances are taking place; body counts may still exist and incentives and promotions still lack civilian control. The U.S. Congress and the State Department must focus on the next steps in prosecuting those involved in committing and covering up these crimes and in ensuring, through effective civilian oversight, that there are no longer incentives that promote abuses. But U.S.-Colombian dialogue did help to encourage the limited progress that has occurred.

Making human rights progress is not some cookie cutter set of programs. It means having an analysis of the obstacles to overcoming impunity which shifts with time as some obstacles are overcome and new ones emerge. The only way to have such an analysis is through close dialogue with human rights groups on the ground, as well as receptive government and judicial officials and academic experts. Turning this analysis into action requires active congressional engagement, especially from this subcommittee and its Senate counterpart. It makes it imperative that members as well as aides listen to civil society human rights experts and victims.

And it requires that the U.S. government stand by and stand with human rights defenders, especially when they are under threat.

I know that Latin American governments can be understandably sensitive to human rights scrutiny by the United States. But to that I would say, real progress in addressing human rights problems will mean such scrutiny will not come to bear. And, just as the United States needs to preserve a little objectivity in relation to the recipient governments, it is equally important for the Mexican government in particular to maintain its refreshing willingness to call the United States to task for our failure to comply with our own responsibilities in reducing the violence caused by the drug trade, reducing the flow of arms into Mexico, and not managing to achieve immigration reform and neighborly border solutions. And that brings me back to my first point: The objective dialogue which needs to happen if the United States and Mexico are to resolve their joint problems is a two-way street.

March 10, 2009

¹ The U.S. Department of State, *2008 Human Rights Report: Mexico*, February 25, 2009.

² Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, National Survey on Drug Use and Health, 2002-2007.

³ For a comprehensive treatment of the issue of U.S. obligations, see *The United States and Mexico: Towards a Strategic Partnership: A Report of Four Working Groups on U.S.-Mexico Relations*, Woodrow Wilson International Center for Scholars, January 2009.

⁴ ATF Assistant Director William Hoover, Testimony before House Western Hemisphere Subcommittee hearing, "US Obligations under the Merida Initiative," February 8, 2008. For an excellent treatment of the issue of U.S. obligations, see *The United States and Mexico: Towards a Strategic Partnership: A Report of Four Working Groups on U.S.-Mexico Relations*, Woodrow Wilson International Center for Scholars, January 2009.

⁵ Joel Millman, "U.S. Guan Trial Echoes in Drug-Torn Mexico," *Wall Street Journal*, March 2, 2009.

⁶ Letter to President Obama from Reps. Eliot Engel, Michael Castle, and 51 other members of the House of Representatives, February 12, 2009.

⁷ James C. McKinley, Jr. "U.S. is Arms Bazaar for Mexican Cartels," *New York Times*, February 25, 2009. "In 2007, the firearms agency traced 2,400 weapons seized in Mexico back to dealers in the United States, and 1,800 of those came from dealers operating in the four states along the border, with Texas first, followed by California, Arizona and New Mexico."

⁸ See Tom Diaz, "Disrupting Arms Trafficking to Mexico," Violence Policy Center, October 17, 2008.

⁹ Peter DeShazo and Johanna Mendelson Forman, "A Treaty that Can Help Stem Drug Violence in Mexico," *Washington Times*, February 24, 2009.

¹⁰ Ramón Bracamontes, "Mexico's Military Influx Leaves a City on Edge," *El Paso Times*, March 3, 2009.

¹¹ President Calderón most recently referred to this plan to withdraw the military when Mexico underwent the Universal Periodic Review before the Human Rights Council of the UN in February 2009.

¹² Documents such as the National Defense Plan for 2007-2012 seem to indicate a role for the military in law enforcement at least through 2012. Jesus Aranda, "Ordena Calderón mantener al Ejército en las calles hasta 2012," *La Jornada*, January 25, 2008.

<http://www.jornada.unam.mx/2008/01/25/index.php?section=politica&article=003n1pol>

¹³ The U.S. Department of State, *2008 Human Rights Report: Mexico*, February 25, 2009.

¹⁴ Ruben Villapando, "Distribuyen manual en Juarez para convivir con los militares," *La Jornada*, 6 March 2009.

¹⁵ Manuel Roig-Franzia, "In Mexico, War on Drug Cartels Takes Wider Toll; Military Campaign Draws Accusations of Rights Abuses," *Washington Post*, April 14, 2008.

¹⁶ Article 13 of the Mexican Constitution defines military jurisdiction as covering only "crimes against and violation of military discipline."

¹⁷ "Cases in which military jurisdiction has been used in Mexico as a cloak for impunity are numerous: the disappearance of Rosendo Radilla Pacheco, which is currently under consideration before the Inter America Court of Human rights; the torture of environmental defenders Rodolfo Montiel and Teodoro Cabrera; the rape and torture of indigenous mixteca women Francisca Santos and Victoriana Vázquez; the rape and torture of indigenous tlapaneca women Valentina Rosendo Cantú and Inés Fernández Ortega; the rape and torture of sisters and indigenous tzeltal women of Chiapas, Ana, Beatriz and Celia González Pérez, as well as the extrajudicial executions verified in the municipality of Santiago de Caballeros, Sinaloa." From "Mexican Human Rights Organizations Speak Out Against Statements Made by Military Authorities," press release, February 24, 2009, signed by the National Network of Human Rights Civil Organizations "Todos los Derechos para Todas y Todos"; the Mexican Commission for the Defense and Promotion of Human Rights; the Human Rights Center of the Montaña Tlachinollan; the Center for Justice and International Law; the Center for Human Rights Fray Francisco de Vitoria; the Miguel Agustín Pro Juárez Human Rights Center; the Center for Human Rights Fray Bartolomé de las Casas; and FUNDAR.

¹⁸ *Ibid.*

¹⁹ February 10, 2009 letter to President Obama from Reps. Ortiz, Reyes, Hinojosa, Grijalva, Filner, Cuellar, Susan Davis, and Rodriguez.