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**“US Foreign Policy, Human Rights and  
Public Security in Colombia and Mexico”**



Mr. Chairman, Committee members:

Thank you for the invitation to appear before the Subcommittee on Human Rights today to share Human Rights Watch's views regarding the human rights and public security challenges facing Colombia and Mexico. It is an honor to be here.

I will focus my remarks primarily on Mexico, but will also briefly address the situation in Colombia, as well as the fundamental challenge that both these countries—as well as others throughout the region—face today: how to reconcile the need for improved public security with the need for improving human rights practices. It is our view that these two objectives—public security and human rights—are fully complementary. Indeed, improving human rights practices is essential for improving law enforcement and strengthening public security.

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

One of the most pressing threats to the rule of law in Latin America today is law enforcement—or the lack thereof—in countries plagued by violent crime.

The need for more effective policing is a top public concern in much of the region. And with good reason. People have a right, well-established in international human rights law, to be protected from violent crime, as well as a right to justice when they are its victims. Yet in many countries, law enforcement agencies find themselves outgunned, literally and figuratively, by criminal organizations that are powerful, well-funded and extremely violent.

Politicians routinely respond to the legitimate demand for better policing by promising to “get tough” on crime. But it is one thing to be tough, and quite another to be effective. Too often, getting tough means condoning abusive police practices that not only undermine the rule of law by violating basic rights, but also fail to curb crime.

Take for example the use of torture by the police in Mexico. Despite countless reports from national and international human rights monitors over the years documenting the problem, many Mexican police continue to torture for a simple reason: they find it easier to beat confessions out of people than to conduct the serious investigations that could solve crimes. Mexican judges routinely accept the coerced confessions as proof of guilt, even when the victims retract them later at trial. The outcome is disastrous for both human rights and public security: innocent people are convicted of crimes they didn't commit, while the criminals remain at large.

Such abusive practices are hardly unique to Mexico. Police and other security forces regularly commit serious abuses in other Latin American countries, especially those where there is strong public demand to contain violent crime.

A major reason these abuses are so widespread is that law enforcement agents who commit them are rarely brought to justice. In some countries, this is because the justice system relies on the police to investigate themselves, an arrangement that virtually guarantees that allegations of abuse will be ignored. While many countries have established ombudsman's offices and other mechanisms to receive complaints of abuse, these have proven no substitute for the criminal investigations and prosecutions that are necessary to curb abusive practices.

Another crucial factor is the misperception—common throughout much of the region—that protecting human rights and promoting public security are conflicting aims. Many believe that holding police accountable for their abuses would weaken the hand of law enforcement and thereby strengthen the violent mafias and gangs they must confront.

But the opposite is true. Fuller accountability, through the criminal prosecution of abusive practices, does not undermine law enforcement. Rather, it forces police and prosecutors to do their jobs more effectively. The result is fewer abuses and a higher number of genuine criminals behind bars.

## **II. COLOMBIA**

One of the countries that has faced the highest levels of violence in recent years is Colombia. In the context of a decades-old internal armed conflict, Colombia has been plagued by widespread and serious abuses by irregular armed groups, including guerrillas and successor groups to paramilitaries, who are involved in illegal drug trafficking.

The Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) routinely use antipersonnel landmines. And the FARC, in particular, is frequently involved in massacres, killings, threats, and recruitment of child combatants.

Trade unionists, human rights defenders, journalists, community leaders, indigenous and Afro-Colombian leaders, displaced persons' leaders, and paramilitaries' victims seeking land restitution or justice are frequently the targets of threats and violence by successor groups to paramilitaries.

The Colombian military is also responsible for serious abuses, including extrajudicial killings of civilians who are then falsely reported as guerrillas killed in combat.

A major factor contributing to the ongoing abuses against civilians has been the lack of full accountability of perpetrators. Colombian prosecutors and judges have made determined and

sometimes successful efforts to bring perpetrators to justice. Yet they continue to face considerable obstacles, including (when suspects are state actors) resistance from the executive branch.

### **Criminal Justice Reform**

One important step that Colombia has taken to strengthen the rule of law is a sweeping reform of the criminal justice system. In 2004, the Colombian Congress approved new rules of criminal procedure that sought to increase the fairness, impartiality, and transparency of criminal trials, and reduce case backlogs by reducing the time required to resolve criminal cases. The legislation also codified fundamental due process rights, such as the presumption of innocence and the right to legal defense.

This new system has been phased in gradually, with substantial support from the US Department of Justice and USAID, in the form of training for prosecutors, judges, and defense attorneys, and the setting up of new oral trial courtrooms.

The impact of the reform has so far been most evident in cases involving criminal suspects allegedly caught *in flagrante*, which are generally resolved far more expeditiously now than in the past. However, the challenge of realizing the reform's full potential—in terms of strengthening the criminal justice system and ensuring due process rights—remains very much a work in progress.

### **Paramilitaries and Their Successors**

The administration of President Álvaro Uribe claims that paramilitaries no longer exist. But while more than 30,000 individuals participated in a paramilitary demobilization process, there is substantial evidence that many were not paramilitaries. Others never demobilized, and some returned to crime after demobilizing. Law enforcement authorities never investigated most of them.

Successor groups to the paramilitaries, often led by mid-level paramilitary commanders, are rapidly growing. The Colombian National Police reported that as of July 2009 the groups had more than 4,000 members and were swiftly expanding their areas of operation. Non-governmental estimates run as high as 10,200.

Like the paramilitaries, the groups are engaging in drug trafficking, actively recruiting, and committing widespread abuses, including massacres, killings, rape, threats and forced displacement.

In Medellín, after a steady decline in official indicators of violence, there has been a dramatic surge in homicides since 2008, apparently committed by these groups. In 2009, there were 2,186 homicides, more than twice as many as in 2008. In the first three months of 2010, there were 503, a 55% increase from the number during the same period in 2009.

The implementation of the Justice and Peace Law, which offers dramatically reduced sentences to demobilized paramilitaries who confess their atrocities, has been slow and uneven. Four years after the law was approved, there are still no convictions. Most paramilitaries are not even participating in the process. Prosecutors have made little progress in recovering illegal assets and land that paramilitaries took by force.

President Uribe's extradition, in May 2008, of most of the paramilitary leadership to the United States interrupted the leaders' confessions in the Justice and Peace process. It remains unclear to what extent US prosecutors are questioning the paramilitary leaders about their accomplices in Colombia, or their human rights crimes.

In recent years the Colombian Supreme Court has made unprecedented progress in investigating accusations against members of the Colombian Congress of collaborating with the paramilitaries. In what is known as the "parapolitics" scandal, more than 80 members—nearly all from President Uribe's coalition—have come under investigation. But the Uribe administration has repeatedly taken actions that could sabotage the investigations, including issuing public and personal attacks against Supreme Court justices. Meanwhile, investigations by the Attorney General's Office into senior military officers and businesspersons who allegedly collaborated with paramilitaries have moved forward slowly.

### **Illegal Surveillance**

In February 2009 Colombia's leading news magazine, *Semana*, reported that the Colombian intelligence service, DAS, which answers directly to President Uribe, has for years been engaging in extensive illegal phone tapping, email interception, and surveillance of a wide array of persons viewed as critics of the Uribe administration. These include trade unionists, human rights defenders, independent journalists, opposition politicians, and Supreme Court justices.

The Attorney General's Office opened an investigation into the surveillance, but *Semana* reported that prosecutors inexplicably focused almost exclusively on surveillance carried out in 2002-2005 (during the tenure of former DAS chief Jorge Noguera, who is on trial for homicide and links to paramilitaries), despite evidence that the DAS has engaged in systematic surveillance for years afterwards. Two of the prosecutors conducting the investigation resigned, but the investigations have continued moving forward slowly.

Meanwhile, according to *Semana*, the illegal surveillance continued. For example, *Semana* revealed that numerous calls of Supreme Court Assistant Justice Iván Velásquez, the lead investigator of the "parapolitics" scandal, had been illegally intercepted through the end of August 2009.

## **Military Abuses**

In recent years there has been a substantial rise in the number of extrajudicial killings of civilians attributed to the Colombian Army. Army members, under pressure to show results, kill civilians and then report them as combatants killed in action. The alleged executions have occurred throughout the country and involve multiple army brigades. Initial information indicates that the rate of killings may have dropped in 2009, possibly as a result of international attention and the opening of criminal investigations.

The Attorney General's Office is investigating cases involving more than 2,000 victims, though prosecutions are moving forward slowly. In preliminary findings after a June 2009 visit to Colombia, United Nations Special Rapporteur on Extrajudicial Executions Philip Alston noted, "The sheer number of cases, their geographic spread, and the diversity of military units implicated, indicate that these killings were carried out in a more or less systematic fashion by significant elements within the military." He said that the Colombian military justice system contributes to the problem by obstructing the transfer of human rights cases to the ordinary justice system.

President Uribe for years publicly denied the problem existed, and accused human rights groups reporting these killings of helping the guerrillas in a campaign to discredit the military. After a major media scandal in 2008 over the executions of several young men from Soacha, a low-income Bogotá neighborhood, Uribe dismissed 27 members of the military. There were several more dismissals in 2009. But President Uribe has continued to claim that the executions are only isolated cases.

## **III. MEXICO**

### **The Use of the Military in Public Security Operations and Increasing Human Rights Abuses**

Since taking office in December 2006, Mexico's President Felipe Calderón has relied heavily on the armed forces to fight serious drug-related violence and organized crime. The need to improve public security is clear. Mexico is facing powerful drug cartels that are engaged in violent turf battles, an influx of sophisticated weapons, a large number of kidnappings and executions in several Mexican states, and shocking forms of violence including beheadings. The competition and fighting among powerful cartels, as well as shootouts between cartel members and law enforcement agents, have resulted in the deaths of thousands of civilians, police, and members of the military.

The number of deaths in the confrontation between security forces and drug cartels has risen significantly since President Calderón initiated this new strategy. In 2007, 2,837 people died in violence related to drug trafficking and organized crime. In 2009, that number had risen to 9,635. In total, such confrontations have claimed more than 22,700 lives in Mexico from 2007 to March 2010.

These deaths have mainly been concentrated in the cities and states used for the cultivation of drugs and their transport across the border to the United States.

Mexico has used its armed forces in counternarcotics and counterinsurgency operations for decades. But the participation and visibility of the armed forces in law enforcement operations has increased dramatically during the Calderón administration, which has portrayed the deployment of the army as one of its key strategies to combat drug trafficking and increase public security. Thousands of members of the military have been incorporated into the federal police force, and more than 50,000 military and police officers have been deployed throughout the country. In some violent cities, such as Tijuana, local governments have appointed high ranking military officers to head the police force. In others, such as Ciudad Juarez, the armed forces have all but replaced the police in public security operations for sustained periods of time. The Calderón administration has stated that the use of the armed forces is temporary, but the government has yet to approve a plan for withdrawal of the troops.

While engaging in law enforcement activities, Mexico's armed forces have historically committed serious human rights violations. Human Rights Watch has documented a wide range of abuses by the military, including cases of torture, rape, killings, and arbitrary detentions of dozens of people during public security operations in various Mexican states during the Calderón administration. Many of these abuses are documented in detail in a recent report by Human Rights Watch, "[Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations](http://www.hrw.org/en/reports/2009/04/28/uniform-impunity)" (<http://www.hrw.org/en/reports/2009/04/28/uniform-impunity>).

In April 2010, Human Rights Watch conducted a brief fact-finding mission to Tijuana to investigate abuses by security forces. President Calderón has repeatedly held Tijuana up as a place where the military's deployment has produced significant gains in public security. In a November 2009 speech, Calderon said, "in Tijuana, in contrast with other cities, we have significantly lowered the rates and indices of criminality, and we have taken the initiative in the fight against the criminals."

In the course of our visit, we found credible allegations of the systematic use of torture by the army, including more than 100 cases since 2009 of individuals who alleged they were arbitrarily detained, transported to military bases, and tortured to obtain false confessions. The torture tactics they described fit a pattern: according to victims and their family members, their interrogators blindfolded them, beat them, applied electric shocks to their genitals, threatened to kill them and their families, and asphyxiated them by holding plastic bags over their heads. During their arbitrary detentions and interrogations, authorities did not inform the families of victims that they were being held. In several cases, victims alleged the collaboration of civilian authorities in abuses, such as police assisting the military in arbitrary arrests, or members of the state prosecutor's office being present when victims were forced to sign confessions.

Human Rights Watch is not alone in documenting such abuses. Mexico's own National Human Rights Commission has issued comprehensive reports on more than 50 cases involving egregious

army abuses, including killings, rape and torture, since President Calderón took office. During that same period, the Commission has received nearly 4,000 complaints of abuses by the army. What's more, the numbers of both complaints and comprehensive reports have increased significantly with each passing year of the military's deployment. In 2006, the CNDH did not issue a single comprehensive report on abuses by the military; in 2009, it issued 30. And from 2006 to 2009 the number of complaints of military abuse registered with the CNDH grew ten-fold. The UN Human Rights Committee, as well as local and international nongovernmental organizations, have all documented widespread abuses by Mexico's security forces under President Calderón.

Such horrific abuses directly undermine the goal of stopping drug-related violence and improving public security. The army is currently deployed in the areas of the country most torn apart by drug-related violence. It would be in the military's best interest to act and be seen to act in a manner that is professional and respectful of civilians and human rights. When soldiers commit serious human rights crimes, they damage that image, alienating civilians and generating distrust and fear of the army in populations that otherwise are best placed to assist law enforcement efforts. The abuses also run counter to one of the main purposes that the armed forces are charged with serving in public security operations: enforcing the law and protecting members of the public—not harming them.

### **The Military Justice System and Impunity for Abuses**

An important reason military abuses persist is that they go unpunished. And they go unpunished in significant part because most cases end up being investigated and prosecuted by the military itself. By allowing the military to investigate itself through a system that lacks basic safeguards to ensure independence and impartiality, Mexico is, in practice, allowing military officers involved in law enforcement activities to commit egregious human rights violations with impunity.

The near-total impunity for military abuses is rooted in the fact that the Mexican military justice system is not structured to address alleged violations of the rights of civilians independently and impartially. The secretary of defense wields both executive and judicial power over the armed forces. Military judges have little job security and may fear that the secretary will remove them or otherwise sideline their careers for issuing decisions that he dislikes. Civilian review of military court decisions is very limited. To make matters worse, there is virtually no public scrutiny of, or access to information about, what actually happens during military investigations, prosecutions, and trials, which can take years.

These structural flaws are borne out in practice. The Mexican Ministry of Defense limits excessively and without reasonable justification information the public's access to basic information on the status of army abuse cases still pending before the military justice system, making it extremely difficult to know with certainty to what extent members of the armed forces are, in fact, being held accountable. In many cases, witnesses and victims are reluctant to testify or participate, afraid of the future consequences of speaking about military abuses in front of military officials. Military

prosecutors routinely close investigations for lack of evidence in reliance on soldiers' testimony, ignoring independent, credible evidence that abuses have in fact occurred. As a result, the likelihood of obtaining justice in such cases in the military justice system is very slim.

Although Mexico argues that it is possible to challenge decisions adopted by military courts before the civilian justice system through an injunction (*amparo*), this recourse exists, essentially, to protect the due process rights of the member of the military accused of committing a crime. Victims and their families are unable to challenge the basic question of which justice system should have jurisdiction to investigate human rights abuses. In August 2009, Mexico's Supreme Court ruled that a victim did not have legal standing to challenge the jurisdiction of military tribunals to investigate military abuses. The case was brought by the wife of a victim of an extrajudicial execution by the military. The ruling effectively closes all legal recourse for victims and their families to challenge military jurisdiction in cases of human rights abuses.

The failure of Mexico's military justice system to hold soldiers accountable for human rights abuses is borne out by the numbers. According to information provided the Mexican government—which was only made available after Human Rights Watch repeatedly requested evidence that the military justice system was in fact prosecuting army abuses—only three soldiers have been found guilty of human rights crimes committed during the Calderón administration. However, one of those convictions resulted from an automobile accident, which does not constitute a human rights violation, and another was overturned on appeal. Therefore, only one case qualifies as a conviction for a human rights abuse, in which a soldier was sentenced to 9 months in prison for killing one civilian by opening fire at a military checkpoint.

Human Rights Watch's recent fact-finding mission to Tijuana provides a clear example of how this system has led to impunity. In spite of victims' statements before judges in criminal courts that they were forced to sign confessions under torture; scores of complaints of torture made to the state and national human rights commissions, as well as the state and federal attorneys general offices; and the presentation of several cases of alleged torture from Tijuana in a November 2009 hearing before the Inter-American Commission on Human Rights, not a single soldier has been adequately prosecuted for such abuse. While the Mexican government claims it is investigating several of these incidents, the opaqueness of the military justice system makes it impossible to know what steps, if any, have been taken to look into these alleged abuses.

### **A Missed Opportunity: The Merida Initiative, Human Rights Requirements, and US Certification**

The United States became a partner in Mexico's efforts to confront its powerful drug cartels in October 2007, when it launched the Merida Initiative to confront organized crime in Mexico and Central America. In the time since, it has appropriated more than \$1.3 billion in support for Mexico in this effort. And ranking officials in the US government and military have suggested this collaboration will continue for years to come.

In view of the fact that Mexico decided to involve its armed forces—with their own imperfect track record on human rights—in a much more active role in drug enforcement, as well as the lack of police accountability and the widespread practice of torture in the country, the Merida legislation conditioned 15% of select funds on the fulfillment of four human rights requirements:

- improving police transparency and accountability;
- establishing a consultation mechanism with Mexican human rights organizations and civil society to improve the Merida Initiative;
- ensuring that civilian prosecutors and courts are investigating and prosecuting military forces who have been credibly alleged to have committed human rights violations; and
- enforcing the prohibition on the use of testimony obtained through torture or other ill-treatment.

By law, the 15% of funds are to be withheld until the State Department reports in writing to the House and Senate Committees on Appropriations that Mexico is meeting all four human rights requirements included in the package.

In August 2009, the State Department submitted a report to Congress on the Merida Initiative, which did not show that Mexico was meeting the four requirements. For example, on the prohibition on the use of testimony obtained through torture or other ill-treatment, the report said: “Since 2007, we are not aware that any official has ever been convicted of torture, giving rise to concern about impunity. Despite the law’s provisions to the contrary, police and prosecutors have attempted to justify an arrest by forcibly securing a confession to a crime.”

The State Department also reported that it is “uncommon” that civil authorities prosecute violations committed by soldiers, because such cases are usually handled by military prosecutors and courts. The report went on to recognize serious structural flaws in the military justice system that took on these cases, stating, “the opaqueness of the [Mexican] military court system, makes it difficult to analyze the nature and type of complaints filed, the status of cases against members of the military alleged to have violated human rights, or the results of the military prosecution.” Finally, the report noted that the scope of civilian review of military decisions is virtually nonexistent, stating: “victims and their relatives have no legal recourse to request prosecution or appeal the outcome of a military court.”

These findings on torture and the ongoing use of military of jurisdiction clearly show that Mexico did not meet at least two of the human rights requirements set out by the Merida Initiative. However, despite these findings, the 15% of Merida funds tied to human rights requirements was released by Congress following the State Department report.

The US government has rightly recognized the United States’ shared responsibility for, and strategic interest in, confronting Mexico’s violent cartels. Both the demand for the cartel’s drugs and the supply of the powerful arms they use come from north of the border. But by failing to uphold

Merida's human rights conditions, the United States is shirking an important part of this responsibility. As a result, Mexico has received not only the additional funds, but also a powerful signal that the US will not hold it accountable for making the human rights improvements required under the Merida Initiative.

The United States has an opportunity to correct this mistake. In the coming months, the next 15% installment of Merida Initiative funds will be up for review, contingent upon compliance with the same four human rights requirements. In determining whether these funds should be released, the State Department should thoroughly and objectively evaluate whether Mexico has met each of the four human rights requirements. The State Department should only issue a report if Mexico has met all four of the requirements, in which case the report should explicitly state that all conditions are being met. Otherwise, the 15% of select Merida funds should be withheld.

The US government created the human rights requirements in the Merida Initiative to help Mexico wage a more effective campaign against its violent drug gangs. It is in the interest of both countries that the State Department and Congress fulfill their obligations to uphold these requirements, and abide by the process through which they are evaluated.

### **Shifting Merida Aid from Military Funding to Strengthening the Rule of Law**

Given the human rights record of the military in public security operations, Human Rights Watch welcomes the shift in Merida funding reflected in the 2011 budget proposal submitted by President Obama. The proposed budget would redirect a significant portion of Merida funding from foreign military funding to building the rule of law and reform to the judicial system.

In March 2008, Mexico approved a comprehensive justice reform that, in many respects, represented a historic step forward. The reform lays the foundation for an oral and adversarial justice system, and contains measures that are critical for promoting greater respect for fundamental rights. Human Rights Watch supported the passage of the reform, and commended, for example, the prohibition on the use of evidence obtained through torture. (Human Rights Watch has, however, expressed deep concern about specific provisions within the reform, such as a revision to the Constitution that allows prosecutors, with judicial authorization, to detain individuals suspected of participating in organized crime before they are charged with a crime.)

In spite of the largely positive changes contained in the justice reform, Mexico has been extremely slow to implement it. That is in a large part because the legislation creating the reform gave Mexico eight years to implement it. Thusfar, only a handful of Mexico's 32 states have even started to implement the reforms. US assistance for the justice reform through the Merida Initiative could have a significant impact in making this process both more efficient and more effective.