

Testimony of Ana Paula Hernández
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on the Merida Initiative

before the

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My name is Ana Paula Hernández and I have been working in the promotion and defense of human rights in Mexico for more than 12 years. I first worked in the Mexico City based Miguel Agustín Pro Juárez Human Right Center (PRODH) and was then deputy director of Tlachinollan Human Rights Center, located in the Mountain Region of the state of Guerrero. In 2005 I became a consultant for the Office in Mexico of United National High Commissioner for Human Rights and am now working as a consultant for a number of foundations who fund human rights work in Mexico. In the past year I have also helped form the first civil association working primarily on the issue of drug policy from a human rights perspective, the Collective for an Integrated Drug Policy (CUPIHD).

I want to focus my testimony on speaking about the current situation in Mexico as a result of the “war on drugs” from the perspective of civil society, drawing on the direct experience I have had particularly when living in the state of Guerrero and from my work on both human rights and drug policy.

Militarization in Mexico: the norm, not the exception

Militarization of public security and the use of the army as the means to fight the war against drugs has been a policy of the Mexican government since the 1980s. Yet the use of the military has never been as evident or as intense as with Felipe Calderon’s administration. The operations that deployed thousands of troops in 2007 and 2008 to some of the states most affected by drug trafficking and organized crime have been the most highly publicized actions of his administration. The use of the military is clearly at the core of President Calderon’s drug strategy, something that was again evident just two weeks ago by the deployment of 5,000 additional troops to the city of Ciudad Juárez apart from the 2,500 already there. This city is currently the most violent in the country, where last month 231 homicides occurred in just 28 days, almost equaling the total number of homicides in all of 2006.¹

The military has also taken over the Secretariat of Public Security in the Juarez municipality, something that has progressively occurred in the past two years on a state and federal level as well. At the beginning of December, President Calderon assigned Major Javier de Real Magallanes as deputy secretary of Police Strategy and Intelligence, giving the military direct control both of the operations of the Secretariat of Public Security against organized crime as well as the actions that it carries out in coordination with other federal offices, state and municipal governments.

¹ Turati, Marcela, *La toma de Ciudad Juárez*, Proceso n.1688, March 8, 2009.

Direct participation of the military in public security is increasing on all levels of government and military presence has become more and more common in principal cities in the states of Nuevo Leon, Tamaulipas, Baja California, Michoacan, Sinaloa and Guerrero. In states like Guerrero, the presence of the military is not only in the cities but also in the rural and indigenous communities, where poppy and marihuana are cultivated. The Mountain region of Guerrero, where I lived for four years, is the principal cultivation area for poppy in the country. For over three decades the military has maintained eradication activities in the area, in spite of the fact that these have systematically been proven to be completely ineffective, both in Mexico and in other countries. Yet the Mexican government continues to use the numbers of hectares of destroyed illicit crops as an indicator of success in the war on drugs.

This is a problem that is rarely talked about in Mexico, where the growers of illicit crops are forgotten in the drug war and there is not even talk of alternative development as occurs in other countries like Colombia or Bolivia. In this region, which holds the poorest municipality in Mexico, the cultivation of illicit crops has not represented any economic growth for its population, who are the weakest link in a long chain of buyers, processors and traffickers. Since poppy is neither processed nor consumed in the communities, it has not been a way for the population to overcome the extreme poverty they live in. A kilo of the gum from the poppy flower will take an average family from three to six months to collect, depending on the climate, and will sell for \$1,000 to \$1,500 dollars. Although this is much more than they will earn from selling corn, beans or any legal crop, it is by no means a sufficient amount for a family of at least four members to get by for the following three to six months, until the next harvest.

Instead of fighting the structural causes of this situation, recognizing its social and economic implications and formulating an integral development plan in the communities that can give them alternatives for employment and access to the most basic rights such as food, health and education, the government has continued to use the military as the way to manually eradicate illicit crops. The situation with drug cultivation in Mexico exemplifies the way the Mexican government has decided to tackle the entire war on drugs: short-term, often dramatic, actions with immediate but very limited impact instead of long-term, strategic actions that truly combat the structural causes of the situation Mexico faces today: poverty, corruption, impunity and weak institutions.

Democratic police reform: an urgent need

The use of the military has been presented by the government as a “temporary” measure that is needed due to the uncontrollable violence related to organized crime and the fact that civilian institutions, concretely public security forces, have proven incapable of dealing with the problem in an effective manner. And with this we return once more to the structural causes of the situation: a police force on all levels that is extremely corrupt and that has been profoundly infiltrated by organized crime, with almost no levels of confidence on behalf of citizens who see them much more as part of the problem of insecurity than part of the solution.

To illustrate this I want to refer to a project operating in the Mountain Region of Guerrero and implemented by three civil society organizations, Tlachinollan Human

Rights Center, INSYDE Instituto de Seguridad y Democracia, and FUNDAR, Centro de Analisis. The Civil Police Monitor (CPM) is a civil society organization that promotes transparency, rule of law and human rights within regional police forces. The CPM documents cases of human rights violations committed by police forces, as well as complaints made by the police themselves when their own rights are violated, particularly labor rights. The CPM aims to establish a constructive dialogue that can lead to effective, accountable police forces that fully respect human rights.

In its first year (2008) the CPM documented 117 cases of abuses committed by municipal police forces and judicial police, particularly arbitrary detention and extortion. At the same time, it received complaints by police regarding the fact that they didn't have the most basic equipment such as boots and ammunitions, that they worked shifts of more than 24 hours, that they were often not paid their salary² (which in this region is less than 300 dollars a month), and that many didn't have life insurance, among other things. Poverty in the region permeates all institutions, including the police force, who work in inadequate offices with dirt floors and thin steel roofs and don't have adequate vehicles or guns to carry out their work. With these conditions, can we be surprised that the municipal police force uses extortion as a systematic practice or that they are so easily corruptible and infiltrated by organized crime? Is it a surprise that the police forces, particularly at the municipal level, are both unable and often unwilling to take on organized crime, whose members have by far much greater technology and weaponry? This is just one example in one region of the country, but the reality is similar all over. Lack of accountability, transparency, internal and external controls, and human rights abuses characterize the vast majority of police forces in the country. Lack of adequate training in crucial matters such as the use of force; few material and human resources; poor incentives and low salaries are the police force's other characteristics. The police reforms in México that have taken place have been focused almost all on the federal level, leaving the state and municipal police forces almost untouched in spite of the fact that they are the ones directly in contact with the majority of the population.

If the use of the army is a temporary measure, the only answer is a profound democratic reform of the police force, which is the civil institution in charge of public security. Yet the reform on all levels of government that is urgently needed is not occurring. Recent declarations by President Calderon stated that the army would be on the streets until the police authorities and institutions could guarantee the rule of law.³ How will this be measured? How are resources being allocated to ensure that the long-term reform agenda is not lost in the response to immediate crises?

There are concrete reasons why numerous international human rights protection mechanisms, such as the Inter-American Human Rights Commission, have clearly stated that the military should not be in charge of public security tasks. They are trained in a doctrine of war and confrontation, not of collaboration and work with the community. For this reason the risks of abuse of power and human rights violations is very high, and this is precisely what has occurred as they have increased their presence in Mexico's principal cities. Of a total of 23 recommendations directed at the Secretariat of Defense by the National Human Rights Commission (CNDH) since 2000, 20 have been emitted in the past 2 years. From January 1, 2007 to December 31, 2008 the

² Monitor Civil de la Policía y Cuerpos de Seguridad Pública, *A un año de creación Monitor Civil documenta 117 casos de abuso policiaco*, November 26, 2008.

³ Jimenez, Sergio Javier. *FCH califica de traidores a quienes usan a la gente*, El Universal, February 20, 2009.

CNDH received a total of 1,602 complaints of abuses committed by members of the military, including arbitrary detentions, robbery, threats, intimidation as well as violations to the right to life and integrity.⁴

The Miguel Agustín Pro Juárez Human Rights Center, a well-known center in Mexico City, recently presented its report titled “Supreme Commander? The absence of civil control of the armed forces at the beginning of the Calderon Administration” which documents grave human rights violations committed by members of the military in their fight against organized crime. They tell of the story of Marlene Caballero, a girl who was shot at a military checkpoint in the community of San Luis de la Loma, in the municipality of Tecpan de Galeana, Guerrero, on June 29, 2007, when the soldiers there opened fire on the truck she was traveling in, claiming they thought the van was going to “run them over”. They also report on the death of the Esparza Galaviz family, whose five members were shot and killed on June 1, 2007, near a military checkpoint in la Joya de los Marinez, in the municipality of Sinaloa de Leyva, Sinaloa. The soldiers stated the van they were traveling in did not stop on time and that is why they opened fire.

In the state of Guerrero where I lived for four years, militarization in response to the drug war resulted in members of the military becoming one of the main human rights violators, in addition to the judicial and municipal police. Between 1996 and 2006 the Tlachinollan Human Rights Center documented 125 cases of human rights violations committed by members of the military, among them abuse of authority, arbitrary detentions, harassment and rape. It is important to mention that this was before the Calderon administration increased the military presence in the communities and the cities. These violations have now become even more frequent, as can be seen with recent declarations made by the President of the Human Rights Commission of the State of Guerrero, Juan Alarcón, who stated that just in the past three months, the Commission has received 75 complaints against members of the military.⁵

In addition to these grave violations, the presence of the military in general has threatened the peace and harmony within the communities. The soldiers intimidate the population, stopping them on the roads and interrogating them; they enter their homes, often stealing their food and belongings; they set up camp, many times destroying their crops in the process and take the water from the community. For a population that suffers severe marginalization and vulnerability, the presence of the soldiers, instead of providing greater security, symbolizes a continuation of the repression, threat and harassment to which they have historically been subjected.

Military jurisdiction: a guarantee for impunity

When military personnel are accused of human rights violations, military courts apply article 57 of the Military Justice Code in order keep cases involving the military under its jurisdiction. With this, civilian authorities, responsible for investigating these crimes, are subordinate to the military. The results are easily seen: there is systematic denial of justice for victims of abuse by the army: impunity protects members of the military

⁴ Carrasco, Jorge. *El fuero militar: garantía de impunidad*. Proceso 1688, March 8, 2009.

⁵ [Arreola, Yamilet. En tres meses registra la Coddehum 75 quejas ciudadanas contra soldados, La Jornada, March 8, 2009.](#)

involved in these violations and civilian institutions are weakened, not holding accountable those who shield themselves within military jurisdiction.

Although the Mexican army may not be legally immune, military jurisdiction in practice is a de facto amnesty law that guarantees impunity for military personnel who violate the fundamental rights of the population. In this sense, the military is responsible for human rights violations on two levels: one as the agent directly responsible for the crimes and the other as the agent that guarantees impunity, reserving to its jurisdiction cases in which military personnel are involved and not investigating cases thoroughly or impartially.

Mexico has received a number of recommendations by international human rights protection mechanisms on the issue of military jurisdiction, the most recent being those resulting from the Universal Periodic Review (UPR) it underwent before the United Nations Human Rights Council on February 10th of this year. Mexico approved the UPR, receiving approximately 91 recommendations, 83 of which it accepted. Regarding the other 8 recommendations, it postponed accepting or rejecting them, saying they require a much more detailed and thorough analysis, and they will report on these recommendation in the final report which will be approved in July by the Human Rights Council. The majority of these 8 recommendations are directly related to military jurisdiction, concretely recommending that 1) Mexico review the Code of Military Justice with a view to extending the jurisdiction of civil cases involving violations of human rights by the military 2) Mexico abolish military jurisdiction 3) Mexico have the civil legal system prevail over a military judicial process in its entire territory.

It is imperative that Mexico accepts and implements these recommendations, abolishing military jurisdiction and putting an end to impunity in cases of human rights violations committed by members of the army. This is even more urgent if the army continues to be on the streets and within rural and indigenous communities in many states of Mexico as part of the drug war.

The importance of support for justice reform

Another important recommendation made to the Mexican government as part of the UPR was regarding the *arraigo*, approved in 2008 as part of the justice reform package that allows a detainee to be held up to three months without charges. The *arraigo* has been denounced as both unconstitutional and going against numerous human rights treaties ratified by Mexico. It is another clear example of the serious consequences of the “fight against organized crime” on fundamental human rights. Justice reform in Mexico has been an urgent need for many years, and significant advances were made in 2008 with reforms that implicate a transition from an inquisitorial to an adversarial judicial system, including oral trials. Although these advances are positive, other reforms were approved that imply a regression in civil rights, the *arraigo* being the prime example. In a judicial system clearly marked by corruption, a figure like the *arraigo* is extremely dangerous. The UPR calls for an end to the *arraigo*, yet again, this is one of the recommendations Mexico did not accept.

Justice reform in Mexico must implicate an advance, not a regression, in the guarantee and respect of human rights. Support in this area is key, so that Mexico can make a successful transition into an adversarial judicial system that is efficient and effective in

punishing those who have committed crimes and violations, but that also guarantees the rights to due process of both the victims and the accused.

Conclusion

The Merida Initiative contemplates that 15% of the funds are conditioned to the progress shown by the Mexican government in certain key areas of human rights, a number which have mentioned in this testimony: 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. These are, in my opinion, the minimal things that Mexico should be held accountable for, and it is of extreme importance that the mechanism to monitor their fulfillment is clear and effective.

Many of the things contemplated in the Merida Initiative, such as equipment and technology, are important. Yet as mentioned when we began this testimony, they contribute to short-term, immediate actions but not to long term, structural reforms. It is important to emphasize that this “war on drugs”, “fight against organized crime”, or whichever name one considers more adequate, is destined for failure unless it considers these long- term actions to strengthen Mexico’s civilian institutions in charge of public security, and administration and procurement of justice. Clearly it is the interest of United States to help Mexico “win” this war. It is precisely in these long-term changes where its assistance can be most useful.

This is an impossible war to win if it is primarily waged by the military and continues to implement strategies that have proved to be insufficient and ineffective in other countries, such as eradication. The war will be lost if it does not take into account the rights of the population. Civil society is a key actor in this strategy, yet its active participation and support is weakened if all people experience is extreme violence, human rights violations and lack of access to justice.

A more integrated strategy must be considered, and this also means greater acknowledgement of responsibility by the United States in its role in fighting this drug war, beginning with greater actions for demand reduction within its own country as well as taking effecting measures against arms trafficking into Mexico.

This is not a “battle” that will be won in two, four or six years, and clearly not within one presidential administration. But clear benchmarks for short, medium and long- term change must be established in order to know if we are moving forward or backward.