Structural Human Rights Violations: The True Face of Mexico’s War on Crime

by Stephanie Erin Brewer*

INTRODUCTION

International news coverage of Mexico focuses ever more frequently on the actions of drug traffickers, reporting shootouts between government forces and criminals in the Mexican government’s war against organized crime. Such a picture, however, conceals many of the true dimensions and victims of Mexico’s violent war. In reality, the government carries out its war on crime through an array of human rights abuses whose victims range from detained suspects, innocent and guilty alike, to individuals and communities with no connection to crime.

This article, which forms part one of a two-part series examining Mexico’s public security policies from a human rights perspective and presents an overview of some of the human rights violations that characterize Mexico’s security operations today.1

Context: The Militarization of Public Security in Mexico

In December 2006, President Felipe Calderón began his administration by launching large-scale militarized crime-fighting operations in Mexican states including Sinaloa, Durango, Sonora, Michoacán, Baja California, and Guerrero. These operations, portrayed as a necessary response to drug-related violence, have deployed military and federal police agents in checkpoints on highways and roads, as well as involving searches of homes, sweeps of neighborhoods, and the detention of countless individuals. To carry out these operations, soldiers perform numerous public security tasks that legally fall within the competence of the civilian police or public prosecutors. An average of 45,000 soldiers now participate monthly in such operations,2 with the Department of Public Security declaring in 2008 that it was going “all-out” to step up its “direct fight” and “frontal combat” against criminals.3

Despite these highly visible militarized security operations, the number of killings associated with organized drug crime in Mexico has more than tripled over the past three years, going from over 1,500 in 20054 to over 5,500 in 2008.5 These data highlight the ineffectiveness of the militarized frontal combat approach to drug trafficking. Indeed, the frontal combat approach, by reducing the concept of public security to a territorial war against criminals, fails to address the factors that drive insecurity, including not only endemic flaws in law enforcement practices but also extreme disparities in access to resources and quality work and educational opportunities. Notwithstanding these concerns, the Calderón administration continued to increase its reliance on frontal combat security policies in 2008, announcing the deployment of more soldiers to existing and new operations in states such as Chihuahua, Oaxaca, Chiapas, Coahuila, Sonora, Tabasco, and Campeche,6 as well as promoting harsh criminal justice reforms, including provisions that violate basic standards of due process.

Unmasking Mexico’s Drug War: Grave Violations to Fundamental Rights

The participation of the armed forces in civilian policing tasks and the general intensification of Mexico’s war on crime under the Calderón administration have led to a growing incidence of serious human rights violations. Over the past two years these have included dozens of arbitrary executions (including numerous cases in which soldiers have shot and killed civilians attempting to drive through military checkpoints), a significant number of rapes, frequent arbitrary detentions, routine warrantless searches of homes, and the widespread use of torture. The number of reports alleging human rights violations by Mexico’s Department of Defense (army and air force) received by the National Human Rights Commission more than sextupled during the first two years of the Calderón administration, going from 182 in 20067 to 1,230 in 2008, causing the Department of Defense to become the government agency against whom more violations are alleged than any other agency.8

As another indicator, national media articles from January 2007 through November 2008 registered at least 101 cases

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migrants are robbed and attacked by state authorities who sometimes cite the need to search for arms and drugs.\textsuperscript{22}

**ENTRENCHED IMPUNITY AND THE ILLEGAL EXTENSION OF MILITARY JURISDICTION**

A key factor facilitating the human rights abuses highlighted above is Mexico’s environment of entrenched impunity for human rights violations. Indeed, unlike other Latin American countries, where years of struggle have led to trials and convictions for many human rights violators from the era of military dictatorships, Mexico has not held accountable any perpetrators of its own Dirty War of the late 1960s through the early 1980s.\textsuperscript{23} The absence of such accountability has set the stage for continued impunity for violations today.

In the sphere of military human rights violations, Mexico’s continued use of military jurisdiction to investigate human rights crimes helps to maintain impunity. Article 13 of the Mexican Constitution establishes that “military jurisdiction subsists for crimes and offenses against military discipline. . .”\textsuperscript{24} However, “military discipline” is defined by the army, in Article 57 of its Code of Military Justice, in an expansive manner that includes even crimes committed by military personnel that violate civilians’ basic human rights.\textsuperscript{25} These crimes are thus investigated and tried by military authorities who lack impartiality and independence from the agents they are charged with investigating.

Numerous international human rights bodies have explained that Mexico’s use of military jurisdiction to investigate and try human rights cases is not permissible under international law and prevents accountability for violations. Former UN Special Rapporteur on Torture Sir Nigel Rodley reported after a visit to Mexico, “Military personnel appear to be immune from civilian justice and generally protected by military justice,”\textsuperscript{26} and specified, “[c]ases of serious crimes committed by military personnel against civilians [should] be subject to civilian justice.”\textsuperscript{27} Similar calls have been issued to the Mexican government by the UN Committee Against Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Lawyers, and the Working Group on Arbitrary Detention.\textsuperscript{28} It is also worth noting the constant jurisprudence of the Inter-American Court of Human Rights, which establishes that military jurisdiction “is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the perpetrators of human rights violations.”\textsuperscript{29} At the end of 2008, however, Mexican authorities continued to apply military jurisdiction to cases of human rights abuses in violation of the Constitution and the international standards listed above.

**VIOLATIONS IN MEXICO’S CRIMINAL JUSTICE SYSTEM**

Military abuses are far from the only type of violation that characterizes Mexico’s war on crime. Rather, for individuals arrested by police in Mexico, human rights violations are systematic and widespread at both the state and federal level. Among subjects of great concern in this regard are the violation of the rights to personal liberty, due process, and physical integrity.

Torture in particular continues to be a hallmark of Mexican police work. Researchers for Mexico’s National Human Rights Center have concluded that roughly two-thirds of Mexico’s investigative police rely on torture to obtain information from detainees.\textsuperscript{30} Here too, entrenched impunity perpetuates violations. Although more than one out of five of the recommendations issued by Mexico City’s Human Rights Commission over its fifteen-year period of operations have been for cases of torture committed by city authorities, with city prosecutors opening 197 investigations based on complaints of torture from July 2005 to July 2008, none has led to the conviction of those responsible.\textsuperscript{31} In Jalisco, despite the enactment fourteen years ago of a law against torture, no official has yet been convicted of this crime.\textsuperscript{32} In the major city of Monterrey, Nuevo León, the ten-year-old law against torture has led to just one conviction.\textsuperscript{33}

“The dramatic surge in reported military human rights violations following the implementation of militarized anti-crime operations is not a phenomenon explained by the wayward actions of a few isolated individuals or regiments. Instead, it is a direct consequence of using the military for policing tasks that is both widespread . . . and systematic.”

In light of the dysfunctional model by which Mexico’s criminal justice system has long functioned—one that too often convicts defendants based on confessions extracted under torture, which in many cases are not true—the comprehensive reform of the criminal justice system has been one of the long-standing demands of the Mexican human rights movement.
Unfortunately, Felipe Calderón’s 2007 proposals for criminal justice reform made clear that respect for human rights was not the defining factor in his plan. The modified version of his proposed reform package that eventually became law and reformed the Mexican Constitution in June 2008 contained some essential advances, but also serious setbacks for human rights, publicized by the government as necessary measures in the war on crime.

Among the advances contained in the recent criminal justice reforms, the most notable is the adoption of an adversarial, oral criminal justice system. Following years of advocacy by civil society, academics, and experts in this field, Article 20 of Mexico’s Constitution now explicitly establishes a criminal justice system based on oral trials for criminal defendants, to be implemented gradually over the next seven years.

Among the setbacks contained in the same criminal justice reform is the elevation to Constitutional status of arraigo. Arraigo is a type of detention, already common in Mexico, in which prosecutors may detain individuals for months prior to charging them with any crime. This logic of “detain first and investigate later” has naturally encouraged the use of torture during the period of arraigo to produce leads regarding the possible participation of the detainee or others in crimes. In cases of suspected organized crime, Article 16 of Mexico’s Constitution now provides that prosecutors may place individuals under arraigo for up to eighty days. This prolonged period of detention without charge violates the right to liberty established in the American Convention on Human Rights and the International Covenant on Civil and Political Rights. As Human Rights Watch has pointed out, the eighty-day period of pre-charge detention now authorized in the Mexican Constitution is also “the longest of its kind in any Western democracy. In other countries, the limit for any form of pre-charge detention . . . is generally less than seven days.”

The same set of criminal justice reforms also incorporated into the Constitution a special “regime” of exceptional measures for individuals accused of involvement in organized crime, which restricts due process rights and applies starting from the phase of investigation. This special regime of exception allows for intrusive and human rights-violating measures (such as arraigo and relaxed evidentiary standards) that undermine basic due process guarantees to the detriment of those investigated, charged, or sentenced within its framework.

By establishing two separate justice systems in the Mexican Constitution—one for organized crime and another for common crimes—the reforms in effect translate into one criminal justice system for those seen as citizens and another for those seen as enemies of the State. They divide Mexican society into those who possess human rights, on one hand, and those who are seen as enemies first and human beings second.

**Enemies of the State: Governmental Discourse in the War on Crime**

The government has frequently sought to justify its actions in the war on crime, including human rights violations, by portraying human rights as irrelevant ideals or as an obstacle to fighting criminals. The former head of Mexico’s Special Office for the Investigation of Organized Crime argued that the criminal justice reforms discussed immediately above were necessary to fight crime because “[w]e do not live in an ideal country fit for the application of ideal laws, we live in a country in conflict.” For those who might still have qualms over the annulment or violation of their human rights, the Calderón administration has made clear that persons suspected of organized criminal activities (portrayed in official discourse as the only population affected negatively by the authorities’ war against crime) are not normal citizens in any case, but rather enemies of the State: “in this war against crime, against the enemies of Mexico, there will be no truce made nor quarter given.”

This dehumanizing mentality is also apparent among members of the security forces, such as one high-profile army general who summarized the results of a shoot-out in which he reported that fourteen individuals had been killed by stating simply, “[now] there are fourteen fewer criminals.”

In recent months, the government has moved beyond a mere false dichotomy between human rights and public security, and has sought to appropriate human rights discourse to portray the government’s drug war as affirmatively in favor of human rights. In December 2008, Calderón explained during a ceremony to present the National Human Rights Award:

“... the principal human rights challenge facing Mexico today comes from the unpunished action of crime . . . if we are to transform Mexico into a country characterized by the rule of law and human rights, where the latter are fully respected, it is clear that the public and governmental authorities must join forces [against] this principal challenge of Mexican society.

This is the reason for the [militarized public security] operations, in which we strengthen the power of the State in regions that are dominated by the unpunished action of crime.”

This argument pays lip service to human rights as a concept, yet seeks to divert attention from government authorities’ failure to respect a broad spectrum of human rights by convincing the public that organized criminals, the enemies of the State, are the real source of human rights violations. In this way, the government seeks to neutralize one of the human rights movement’s most powerful tools—the moral capital of the words ‘human rights’—by turning it into a weapon in its own arsenal as it wages the drug war.

**Conclusion**

Rather than a just war against enemies of the State, Mexico’s war on crime frequently takes the form of an assault against civilians who are arbitrarily detained, tortured, or even killed within its framework. As has historically been the case in Mexico’s criminal justice system, these and other violations often fall disproportionately on members of marginalized social groups, who may or may not have any connection to crime.

As Mexico seeks to reverse the dramatic rise in drug-related crime seen over the past few years, it is necessary to reorient the criminal justice system to embody the positive aspects of recent legal reforms, while taking decisive action to eliminate policies and practices that violate human rights. In light of the widespread human rights violations committed by the military, in a strategy of force that has not reduced overall levels of criminal violence, the government must withdraw the armed forces from the streets and recognize that law enforcement duties require the action of an effective, professionalized police structure act-
ing in concert with an efficient judicial system. To this end, the government should implement the system of adversarial, oral criminal trials established in the Constitution as soon as practicable, observing the prohibition on the use of testimony obtained through torture and consequently catalyzing improvements in police investigatory practices. Another concrete step urgently needed in the current context is the prosecution—in civilian jurisdiction—of state security agents who commit torture and other human rights violations, ending the current cycle of impunity. Such measures would in turn increase public trust in police, as would the existence of effective police oversight mechanisms and the recruitment and training of a better-paid and better-educated police force. In a country in which underreporting of crimes to the authorities is the leading cause of impunity for criminals, the advantages of these steps for human rights and security alike are clear.

Simultaneous actions to eliminate structural causes of insecurity, such as those aimed at reducing poverty and vast disparities in access to government services, are crucial. Such measures, sometimes erroneously dismissed as idealistic plans that must wait until the crime problem is solved, are instead urgent legal obligations and some of the most critical steps to achieving security in the country (addressing these problems also appears considerably less idealistic than a plan to achieve security through indefinite combat against a self-replenishing supply of criminals).

In short, as photos and headlines continue to bring news of Mexico’s crime war to the international community, it is increasingly crucial to recall that reducing criminal violence is a goal that neither justifies nor, evidently, is advanced by unleashing a systematic war on the human rights of Mexico’s population.

ENDNOTES: Structural Human Rights Violations

1 Part two of the series will focus on the impact of US foreign policies, specifically the Mérida Initiative aid package, on the human rights situation in Mexico.
10 Id.


22 See María de Jesús Peters, Militares cobran entrada al país a indocumentados, dicen en Chiapas, El Universal, April 14, 2007.

23 Although of a smaller numerical scale than the Dirty Wars of the Southern Cone, this period of state-sponsored repression included the use of forced disappearance (which claimed hundreds and perhaps more than 1,000 victims) and several high-profile massacres. See Esclarecimiento y sanción a los delitos del pasado durante el sexenio 2000-2006: Compromisos quebrantados y justicia aplazada, 2006 (book by a coalition of seven Mexican NGOs and a national network of human rights organizations, on file with author), pp. 9-10, 50.

24 Earlier this year, Center Prodh filed two amparos (legal actions designed to protect an individual against illegal governmental conduct) challenging the constitutionality of Mexico’s Code of Military Justice insofar as it extends military jurisdiction over cases of human rights violations. These legal actions come in the context of the military’s arbitrary shooting of six individuals in the community of Santiago de Caballeros, Sinaloa, in March 2008, resulting in the deaths of four of the victims. Following the initial denial of the amparo actions, we and several of the victims’ family members appealed and asked Mexico’s Supreme Court to hear the case, which would give the Court the opportunity to declare that the use of military jurisdiction to investigate and judge human rights violations is unconstitutional.


26 Id. at ¶ 88.


29 Georgina Pineda, Dos de cada tres judiciales torturan para investigar, Milenio, Dec. 15, 2008, available at http://www.milenio.com/node/132062. The Committee Against Torture found in 2003 that torture remains a systematic practice in Mexico, saying “torture continues to be practised frequently in Mexico. . . the widespread absence of penalties, whether administrative or criminal, for those responsible [is a contributing factor].” See Committee Against Torture [CAT], Report on Mexico Produced by the Committee Under Article 20 of the Convention, ¶ 137-38 CAT/C/75 (May 25, 2003).


32 Id.

33 The initial limit established in Article 16 is forty days, after which the period of arraigo may be extended up to eighty days.

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35 Letter from José Miguel Vivanco, Executive Director,

36 Americas Division, Human Rights Watch, to President Felipe Calderón (March 6, 2008) available at http://hrw.org/english/docs/2008/03/06/mexico18221_txt.htm.


