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Examining the Next Steps in the US-Mexico Security Relationship”  
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Chairman Udall, Ranking Member McCain, and distinguished members of the committee, thank you for this opportunity to address the Subcommittee on Western Hemisphere and Global Narcotics Affairs on the critically important issue of the US-Mexico security relationship. My name is Nik Steinberg and I am a senior researcher in the Americas division at Human Rights Watch.

My testimony today will be divided into three parts. The first will set out the widespread human rights violations committed by Mexican security forces with near complete impunity over the past six years of the “war on drugs.” The second will analyze the Peña Nieto administration’s response to the human rights crisis it inherited. While the new administration has acknowledged the unprecedented scale of abuses and the shortcomings of its predecessor’s overall public security strategy, it has demonstrated little progress in the investigations into those abuses or reforms to the policy that produced them. The third and final part will ask how the US can play an active role in helping Mexico create a less abusive, and more effective, public security strategy, which is in both countries’ interest.

### **Widespread Abuses and Impunity in Mexico’s “War on Drugs”**

In December 2006, then-President Felipe Calderón deployed Mexico’s military to confront the country’s powerful and violent cartels. The strategy produced a dramatic increase in serious abuses committed by security forces, virtually none of which have been adequately investigated and prosecuted.

#### *Enforced Disappearances*

Human Rights Watch has documented approximately 150 cases of *enforced disappearances* during the administration of President Calderón (Dec. 2006 - Dec. 2012)—cases in which we found compelling evidence that state agents had participated in the crime. These crimes have been perpetrated by members of all branches of the security forces: the Army, the Navy, and the federal and local police. In some cases, such as a series of more than 20 enforced disappearances by Navy personnel in June and July 2011, the common *modus operandi* of the crimes, the scale of the operations, and the inconsistent official accounts suggest the crimes may have been planned and coordinated. In more than 60 of the 149 cases, we found evidence that state agents collaborated directly with organized crime groups to disappear people and extort payments from their families.

The enforced disappearances documented by Human Rights Watch do not represent all of the cases in Mexico since 2007. On the contrary, official statistics leave little doubt that there are hundreds, if not thousands, more. For example, Mexico’s official National Human Rights Commission (Comisión Nacional de los Derechos Humanos) has registered nearly 2,500 disappearances in which evidence points to the involvement of government officials.

Prosecutors and law enforcement officials consistently fail to search thoroughly and promptly for people reported missing or to investigate those responsible for the disappearances. All too often, officials blame the victims and tell families it is their responsibility to investigate. What limited steps prosecutors take are undermined by recurring delays, errors, and omissions. The inept or altogether absent investigations exacerbate the suffering of the families, for whom not knowing what

happened to their loved ones is a source of perpetual anguish. Making matters worse, families of the disappeared may lose access to basic social services that are tied to the victim's employment, forcing them to fight slow, costly, and emotionally draining battles to restore essential benefits such as child care.

### *Torture*

Human Rights Watch has obtained credible evidence of torture committed by state agents in more than 170 cases across five states. The tactics we documented—which most commonly included beatings, asphyxiation with plastic bags, waterboarding, electric shocks, sexual torture, and death threats—are used by members of all security forces. The apparent aim of such tactics is to extract information about organized crime, as well as to elicit forced confessions that not only accept guilt but also *a posteriori* conceal the abuses by security forces leading up to and during coercive interrogations.

Authorities responsible for preventing torture have been at best passive observers, and at worst active participants, in grave abuses. Prosecutors travel to military bases to take detainees' confessions in coercive conditions; medical examiners fail to document obvious signs of physical abuse; and judges admit testimony that defendants allege was obtained through torture without first investigating the allegations.

Neither civilian nor military prosecutors adequately investigate and prosecute cases in which there is compelling evidence of torture. Officials rarely apply the Istanbul Protocol, a critical tool for detecting the physical and psychological effects of torture, and routinely fail to conduct basic steps critical to thorough and impartial investigations. Instead, prosecutors too often reflexively dismiss victims' allegations of torture as a cynical ploy by criminals to evade punishment. As a result of this chronic lack of investigation, cases of torture are not punished, abusive security forces continue to use tactics that violate civilians' rights, and a climate of impunity flourishes, which undermines broader public security efforts.

### *Extrajudicial Killings*

Human Rights Watch obtained credible evidence in 24 cases that security forces committed extrajudicial killings, and in most of these cases took steps to conceal their crimes. These killings fall into two categories: civilians executed by authorities or killed by torture; and civilians killed at military checkpoints or during shootouts where the use of lethal force against them was not justified. In the majority of these cases soldiers and police tampered with crime scenes, either to falsely present victims as armed aggressors or to cover up their excessive use of force. And in some cases, our research strongly suggests that security forces manipulated crime scenes to present the false appearance that extrajudicial executions by soldiers were in fact killings carried out by rival drug cartels. Furthermore, in more than a dozen cases, families of the victims of killings told Human Rights Watch they had been pressured by the Army to sign settlements agreeing to abandon all efforts to seek criminal punishment for soldiers, in exchange for compensation.

Shootouts between criminal groups and security forces, as well as between rival gangs, lead to many casualties in Mexico. However, evidence of cover-ups by security forces and the complete lack of investigations into the overwhelming majority of killings cast serious doubt on the government's claims that most violent deaths are the result of confrontations. In the rare instances in which investigations into such killings are opened, justice officials fail to take basic steps to identify those responsible, such as conducting ballistics tests or questioning soldiers and police involved. In addition, rather than question official reports—many of which are marred by inconsistencies and contradicted by witness accounts—prosecutors accept security forces' reports as fact and overlook evidence of excessive use of force or torture leading to death.

#### *The Use of Military Jurisdiction to Investigate and Prosecute Alleged Abuses*

One of the main reasons military abuses persist in Mexico is because the military personnel who commit them are virtually never held accountable. And they go unpunished in large part because most cases are investigated and prosecuted in the military justice system, which lacks basic safeguards to ensure independence and impartiality. Mexico's secretary of defense wields both executive and judicial power over the Armed Forces. Military judges have little security of tenure and may fear that the secretary will remove them or sideline their careers for punishing military personnel. And there is virtually no public scrutiny of, or access to information about, what actually happens during military investigations, prosecutions, and trials. The result is near total impunity for members of the military: while the Military Attorney General's Office opened nearly 5,000 investigations into alleged human rights violations committed by soldiers against civilians from January 2007 to April 2012, in only four of those cases were members of the military convicted (two of which are under appeal).

A series of rulings by the Inter-American Court of Human Rights and Mexico's Supreme Court have called on Mexico to end this practice. The Inter-American Court of Human Rights issued four rulings to Mexico from 2009 to 2010 in which it stated that under no circumstances should military jurisdiction apply to any human rights violations committed by the military against civilians. In July 2011, Mexico's Supreme Court ruled that Mexico's courts are obligated to comply with one of those decisions: the November 2009 Inter-American Court judgment in the enforced disappearance case of Radilla Pacheco v. Mexico. That ruling stated that, "Regarding situations that violate the human rights of civilians, military jurisdiction cannot operate under any circumstance." In another landmark decision in August 2012, Mexico's Supreme Court ruled that the killing of an unarmed man by soldiers at a military checkpoint should be prosecuted in civilian jurisdiction, declaring that the article of the Military Code of Justice used to claim jurisdiction over human rights cases was unconstitutional.

In spite of these rulings, efforts to reform the Military Code of Justice in Mexico's Congress have been met with stiff resistance. Meanwhile, unlike his predecessor, President Enrique Peña Nieto has not sent a proposal to Mexico's Congress to reform the military justice system. Nor were plans to pursue such a reform included among the myriad commitments Peña Nieto and other elected officials made in the Pact for Mexico (*Pacto por México*), which set out key legislative priorities for the new government. The military has stated that it will continue to claim jurisdiction over cases of

alleged abuses until its justice code is reformed. In the meantime, the practice of investigating such abuses remains unchanged, as do the results: the majority of complaints of human rights violations by soldiers continue to be sent to the military justice system, where they still go unpunished.

### *Calderón's Response*

In spite of unimpeachable evidence of enforced disappearances, torture, extrajudicial killings, and other abuses, President Calderón spent virtually his entire presidency vigorously denying that any human rights violations had occurred. Instead, he falsely claimed that 90 percent of the victims of drug-related violence were criminals, and said that reports of abuses had been fabricated by narcos in order to undermine the reputation of Mexico's security forces. It was not until his final year in office that Calderón reluctantly conceded that abuses had occurred. Nevertheless, he continued to insist—contrary to all evidence—that they were isolated incidents, and did not put in place policies to ensure that those responsible for the abuses were brought to justice.

Beyond producing horrific abuses by security forces, Calderón's "war on drugs" also failed to halt an alarming rise in violence, or dismantle the drug-trafficking organizations that pose a serious threat to Mexico's national security. By the government's tally, more than 70,000 people were killed in drug violence during the Calderón years, rising from over 2,500 in 2007 (his first full year in office) to a peak of nearly 17,000 in 2011. Meanwhile, of approximately 620,000 people who were detained in counternarcotics operations, nearly 500,000 (roughly 80 percent) were released for lack of evidence or let out on bail. (In Mexico, people charged with organized crime or other serious offenses cannot be released on bail, meaning that those granted bail could only have been charged with minor crimes, not connected to organized crime.)

### **The Peña Nieto Government: A New Approach?**

Since President Peña Nieto took office in December 2012, we have seen a shift in the government's willingness to recognize some of the serious human rights abuses committed by security forces in the "war on drugs" and, more broadly, the need to change Mexico's counternarcotics strategy. In February 2013, for example, Human Rights Watch released a [report](#) documenting widespread disappearances carried out by Mexican soldiers and police. The day we released the report, the Peña Nieto administration acknowledged that more than 26,000 people had been reported disappeared or missing to government officials during the previous administration—a number that had never previously been made public—and pledged to implement many of our recommendations, such as the creation of a national database of the disappeared.

Two weeks ago, I was in the northern Mexican state of Coahuila, which is across the border from Texas, and is among those hardest hit by drug violence. The governor, Ruben Moreira, told me that more than 1,800 people had disappeared in his state alone. In only one of those cases have those responsible for the crime been convicted. While I was in Coahuila, Mexico's deputy attorney general for human rights, Ricardo García Cervantes, visited the state to meet with relatives of people who have been disappeared. In a public address, he told the families that Mexico is in the midst of "a

humanitarian crisis,” to which he said the government’s response until now has been grossly inadequate.

While acknowledging these problems is a critical step, the Peña Nieto administration has yet to put forward a concrete, comprehensive plan for how to remedy them. One of the critical questions that must be addressed is: How will the Peña Nieto administration’s security strategy be different from its predecessor’s? For example, how will it build a professional, accountable federal police force, rather than yet another corrupt and ineffective one? How will it strengthen anemic efforts to implement a nationwide overhaul of Mexico’s broken justice system, and prevent counter-reforms that would allow some of the most pernicious practices of the old system—such as allowing confessions obtained through torture to be admissible in court—in through the back door? Until now, the Peña Nieto administration has provided no clear answers to these questions.

Nor, in the time since this administration took office, have federal, state, or military prosecutors demonstrated meaningful progress in the investigation and prosecution of any of the hundreds of cases of disappearances, torture, and executions documented by Human Rights Watch. These include cases in which we have provided evidence that not only identifies the specific security force involved, but also the individual units responsible for the abuse.

### **The Role of the United States**

As the main supplier of illicit weapons and the main destination for the drugs trafficked through Mexico, the US has a shared responsibility for addressing Mexico’s organized crime problem. The US has played an active role in collaborating with Mexico’s counternarcotics efforts, primarily through the Merida Initiative, which has channeled approximately \$2 billion to Mexico since 2007. Fifteen percent of that assistance is supposed to be conditioned annually to Mexico’s ability to meet a set of basic human rights requirements, which include ensuring that military personnel who commit alleged abuses are investigated and prosecuted in civilian courts.

Yet despite unequivocal evidence that Mexico has failed to meet the requirements, the Obama administration has repeatedly allowed the funds to be released. As justification, the State Department has argued that Mexico has demonstrated progress toward meeting the requirements as well as greater engagement which, while positive, are not the standards set by the law, nor do they reflect the reality in Mexico. The only frank questioning of whether these requirements have been met has come from members of the US Congress, who have rightly asked what the purpose is of the US establishing human rights requirements if the government is not going to enforce them.

Making matters worse, confronted with one of the worst human rights crises in the hemisphere in decades, the Obama administration has consistently offered uncritical support for Mexico’s “war on drugs.” On multiple occasions, President Obama expressed admiration for Calderón’s “bravery” in confronting cartels, without once expressing concern publicly about the widespread abuses being committed by Mexican security forces, or for Calderón’s rhetoric blaming the victims for the abuses

they suffered. In a state visit to Mexico in April 2013 to meet with Peña Nieto, Obama again neglected to express public concern about human rights violations by security forces.

So what can the US government do to address these serious abuses, and the broader public security problems that persist to this day?

While it is true that Mexico is facing extremely powerful cartels, endemic corruption, and near total impunity for those who commit crimes, the willingness of the Peña Nieto administration to reform its public security approach presents a genuine opportunity to address significant flaws in Calderón's "war on drugs." The US should seize this opportunity by taking a proactive role in working with Mexico to craft a new strategy that recognizes that respect for human rights is a fundamental part of—rather than an obstacle to—improving public security. Both the US and Mexico should send a clear message that the way to dismantle powerful cartels is not through arbitrary arrests and torture, but rather through comprehensive investigations, which lay the groundwork for prosecuting vast, sophisticated criminal networks.

To achieve that goal, Mexico will need to train security forces who understand that cutting corners on rights will only exacerbate the climate of lawlessness in which cartels thrive. And it will need to train prosecutors who have the capacity and will to investigate violent criminals and abusive security forces alike. Meanwhile, the US will need to candidly evaluate Mexico's progress towards meeting the human rights requirements contained in the Merida Initiative, and withhold funds when those benchmarks are not met.

Not only will such a shift in strategy reflect the shared values of the US and Mexico, but it will also advance the immediate goal of improving security while curbing abuses, which is in both countries' interest.

Thank you for your time. I look forward to answering any questions you may have.