

Spring 2012

## Mexico's False Dilemma: Human Rights or Security

Laura Carlsen

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njihr>

---

### Recommended Citation

Laura Carlsen, *Mexico's False Dilemma: Human Rights or Security*, 10 NW. J. INT'L HUM. RTS. 146 (2012).  
<http://scholarlycommons.law.northwestern.edu/njihr/vol10/iss3/1>

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Human Rights by an authorized administrator of Northwestern University School of Law Scholarly Commons.

# Mexico's False Dilemma: Human Rights or Security

Laura Carlsen\*

¶1 Mexico is currently confronting a human rights crisis. Headlines document the overt violence that has claimed more than 50,000 lives<sup>1</sup> since December 11, 2006 when President Felipe Calderón launched the war on drugs.<sup>2</sup> Yet beneath the bloodshed, the erosion of the rule of law and the systematic violation of human rights in the context of the armed conflict caused by the drug war has created a more profound crisis in Mexican society, one whose causes and effects are not only ill-defined but often purposely obscured.

## I. THE WAR ON DRUGS AND NATIONAL SECURITY

¶2 The war on drugs began with the premise that drug trafficking cartels presented the gravest threat to Mexican security and would therefore be a top priority of the incoming Calderón administration. The chosen strategy was modeled on the drug war devised by U.S. President Richard Nixon in 1971 that prioritized enforcement of laws prohibiting the sale and consumption of certain drugs at home, harsh criminalization of consumers and vendors, and interdiction strategies in producing nations.<sup>3</sup> In a series of “Joint Operations” between Federal Police and Armed Forces, the Mexican government has deployed more than 45,000 troops into various regions of the country in an unprecedented domestic low-intensity conflict.<sup>4</sup>

¶3 This deployment has raised numerous constitutional questions. Although there are some specific circumstances in which the use of the Mexican Armed Forces is considered justified within national territory, Article 129 of the Mexican Constitution restricts the functions of the

---

\*Laura Carlsen is the director of the Americas Program of the Center for International Policy. She is based in Mexico City and has written extensively on security and human rights issues.

<sup>1</sup> The Mexican government frequently uses the figure 50,000. Several government agencies provide information, but are often contradictory and not up-to-date. The President's office counts “deaths from presumed rivalries between delinquents.” This recently created speculative category, which the government webpage is quick to note “makes no imputations of a legal character,” does not list national totals. See *Base de Datos de Fallecimientos*, PRESIDENCIA DE LA REPÚBLICA, <http://www.presidencia.gob.mx/base-de-datos-de-fallecimientos/> (last visited March 30, 2012). Walter McKay, a former police officer at WM Consulting in Mexico City monitors press accounts to create a meticulous narco-killing mapping process that registered 54,064 victims as of March 2012. See *Narco Killings*, WM CONSULTING, <https://sites.google.com/site/policereform/narco-killings> (last visited March 30, 2012).

The Tijuana investigative reporting magazine *Zeta* concludes that the December number is 60,420, using a composite of official sources. See *Quinto Año de Gobierno: 60 mil 420 Ejecuciones*, ZETA (Dec. 12, 2011), <http://www.zetatijuana.com/2011/12/12/quinto-ano-de-gobierno-60-mil-420-ejecuciones/>.

<sup>2</sup> For an article in English on the early Operation Michoacán see Sara Miller Llana, *Mexican Army Invades Pot Plantations*, USA TODAY, Dec. 21, 2006, [http://www.usatoday.com/news/world/2006-12-21-mexico-drug-effort\\_x.htm](http://www.usatoday.com/news/world/2006-12-21-mexico-drug-effort_x.htm).

<sup>3</sup> Laura Carlsen, *Beyond the Drug War: Building a Stronger Bilateral Relationship for Peaceful Co-Existence*, CENTER FOR INTERNATIONAL POLICY, AMERICAS PROGRAM (Mar. 4, 2011), <http://www.cipamericas.org/archives/4159>.

<sup>4</sup> This figure is the most frequently cited. See, e.g., *Polarization and Sustained Violence in Mexico's Cartel War*, STRATFOR GLOBAL INTELLIGENCE (Jan. 24, 2012), [www.stratfor.com/analysis/polarization-and-sustained-violence-mexicos-cartel-war](http://www.stratfor.com/analysis/polarization-and-sustained-violence-mexicos-cartel-war).

Armed Forces in peace times to those directly connected to military discipline,<sup>5</sup> and Article 21 stipulates that public security is the task of civil authorities.<sup>6</sup> The federal government continues to define a semi-permanent role for the Armed Forces in the drug war, which in the absence of a declared state of emergency is difficult to justify. Moreover, the domestic role of the Armed Forces threatens civil liberties and individual human rights and constitutes an affront to the rule of law.

¶4

This situation is compounded by the actions of the Armed Forces. Although trained in a war model that posits annihilation of an identifiable enemy, when deployed to communities where civilians are defined as suspected enemies, soldiers and officers have responded too often with arbitrary arrests, personal agendas and corruption, extrajudicial executions,<sup>7</sup> the use of torture,<sup>8</sup> and excessive use of force.<sup>9</sup> The persistence of trying all cases related to military personnel in military tribunals, known as the *fuego militar* or military exemption from civil

---

<sup>5</sup> Constitución Política de los Estados Unidos Mexicanos [Const.], *as amended*, art. 129, Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.), *translated in Constitution of Mexico*, ORGANIZATION OF AMERICAN STATES, [http://www.oas.org/juridico/mla/en/mex/en\\_mex-int-text-const.pdf](http://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf) (“No military authority may, in time of peace, perform any functions other than those that are directly connected with military affairs. There shall be fixed and permanent military commands only in the castles, forts, and warehouses immediately subordinate to the Government of the Union; or in encampments, barracks, or arsenals established for the quartering of troops outside towns.”).

<sup>6</sup> *Id.* art. 21 (“The imposition of all penalties is an exclusive attribute of the judiciary. The prosecution of offenses pertains to the public prosecutor and to the judicial police, who shall be under the immediate command and authority of the public prosecutor.”).

<sup>7</sup> See HUMAN RIGHTS WATCH, NEITHER RIGHTS, NOR SECURITY: KILLINGS, TORTURE AND DISAPPEARANCES IN MEXICO’S “WAR ON DRUGS” 161-205 (2011), *available at* <http://www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0> [hereinafter HRW, NEITHER RIGHTS NOR SECURITY]; Mexico is obliged to prevent and prosecute extrajudicial executions under national law and international treaty-based obligations, including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR). *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 at Art. 4 (1966); *American Convention on Human Rights*, signed Nov. 22, 1969, OEA/Ser. K/XVI/1. 1, Doc. 65, Rev. 1, Corr. 1 at Art. 5, ¶ 2 (1970); *see Parties to the International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION (Mar. 28, 2012), [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en); Inter-American Commission on Human Rights, *American Convention on Human Rights Ratifications*, <http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> (listing nations that have ratified the ACHR).

<sup>8</sup> International human rights law categorically prohibits torture, as well as cruel, inhuman, or degrading treatment. This prohibition is included in Article 7 of the ICCPR and Article 5 of the ACHR. Mexico has also assumed the responsibility to prevent and punish torture by ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1986, as well as the Inter-American Convention to Prevent and Punish Torture in 1987. In April 2005, Mexico ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which gives jurisdiction to the U.N. Subcommittee on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to conduct in-country visits. Reports show clear violations of the Istanbul Protocol on Torture on the part of Mexican security forces. *See, e.g.*, HRW, NEITHER RIGHTS, NOR SECURITY, *supra* note 7, at 28-120; U.N. SUBCOMMITTEE ON PREVENTION OF TORTURE, REPORT ON THE VISIT OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT TO MEXICO, U.N. Doc. CAT/OP/MEX/1, June 2, 2009, *available at* [http://www2.ohchr.org/english/bodies/cat/opcat/spt\\_visits.htm](http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm).

<sup>9</sup> HRW, NEITHER RIGHTS NOR SECURITY, *supra* note 7, at 167.

prosecution,<sup>10</sup> inhibits legal and social accountability and in practice has led to a very low prosecution rate.<sup>11</sup>

¶15 Human Rights Watch (HRW) reports that of 3,671 investigations opened in the military court system between 2007 and 2011, only 29 resulted in convictions of soldiers.<sup>12</sup> In November 2009, the Inter-American Court of Human Rights (IACHR) mandated proscription of the use of military jurisdiction in cases involving human rights violations of civilians.<sup>13</sup> In a historic ruling, the Mexican Supreme Court held on July 6, 2011 that the armed forces must respect the decision of the IACHR. Despite the combined mandate of both the international and national ruling,<sup>14</sup> in practice citizens must file for an injunction against trial in military courts on a case-by-case basis in order to demand investigation and trial in civilian courts.

¶16 The first case to challenge military immunity won a decision by the Sixth District Court of the Second Region to an injunction against the extension of military immunity in the case on December 9, 2011. The family of Bonfilio Rubio Villegas, an indigenous Nahua man shot to death at a military checkpoint in the state of Guerrero, filed the case.<sup>15</sup> Judge Carlos Alfredo Soto Morales ruled on the basis of the Constitution and cited the *Radilla* case, noting that rulings by the IACHR are binding under Mexican jurisprudence.<sup>16</sup> After the federal court ruled that the *Bonfilio Rubio Villegas* case must be tried in a civil court the Army appealed the ruling, sparking protests by citizen organizations and experts that cited a continued resistance on the part of the Armed Forces to submit to civilian justice.<sup>17</sup>

¶17 The National Commission on Human Rights (NCHR), HRW, and local and state human rights groups report major increases in forced disappearances, torture and extrajudicial

---

<sup>10</sup> Mexican Constitution, *supra* note 5, art. 13 (establishing military immunity in limited circumstances: “No one may be tried by private laws or special tribunals. No person or corporate body shall have privileges or enjoy emoluments other than those given in compensation for public services and which are set by law. Military jurisdiction shall be recognized for the trial of crimes against and violation of military discipline, but the military tribunals shall in no case have jurisdiction over persons who do not belong to the army. Whenever a civilian is implicated in a military crime or violation, the respective civil authority shall deal with the case.”).

<sup>11</sup> Randal C. Archibold, *Mexican General is Charged in Killing and Abuses*, NY TIMES, Feb. 1, 2012, at A11, available at <http://www.nytimes.com/2012/02/02/world/americas/mexican-general-charged-in-border-town-atrocities.html?src=un&feedurl=http%3A%2F%2Fjson8.nytimes.com%2Fpages%2Fworld%2Famericas%2Findex.js&sonp>.

<sup>12</sup> HRW, NEITHER RIGHTS NOR SECURITY, *supra* note 7, at 6.

<sup>13</sup> *Radilla Pacheco v. Mexico*, Preliminary Exceptions, Background, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 13 (Nov. 23, 2009).

<sup>14</sup> Human Rights Watch, *Mexico: Ruling Affirms Obligation for Military Justice Reform*, UNHCR (Jul. 6, 2001), <http://www.unhcr.org/refworld/publisher,HRW,,MEX,4e327cc52,0.html>.

<sup>15</sup> The case has become the test case for interpreting the Supreme Court and Inter-American Court rulings that cases of violation of civilian rights by the military must be tried in civilian courts and not military tribunals. The Secretary of Defense has refused civilian jurisdiction in the case, arguing that the Army did not issue an order for Rubio Villegas to be shot and that “the violation of human rights of civilians occurs when the State carries out an action tending to deliberately undermine, transgress or reprimand an individual or group of individuals, as expressed in arbitrary arrests, deaths, incommunicacions, detentions with disappearance, torture and mistreatment.” See Thelma Gómez Durán, *Claman Justicia por Otra Víctima de Militares*, El Universal, Jan. 30, 2012, available at <http://www.eluniversal.com.mx/notas/826301.html> ). For more information (in Spanish), see *Materiales de Prensa: La obligación de reformar al Art. 57 del Código de Justicia Militar*, MIGUEL AGUSTÍN PRO JUÁREZ HUMAN RIGHTS CENTER (Mar. 20, 2012),

[http://centroprodh.org.mx/index.php?option=com\\_content&view=article&id=497%3Amateriales-de-prensa-la-obligacion-de-reformar-al-art-57-del-codigo-de-justicia-militar&catid=209%3Afront-rokstories&lang=en](http://centroprodh.org.mx/index.php?option=com_content&view=article&id=497%3Amateriales-de-prensa-la-obligacion-de-reformar-al-art-57-del-codigo-de-justicia-militar&catid=209%3Afront-rokstories&lang=en).

<sup>16</sup> *Radilla Pacheco v. Mexico*, Preliminary Exceptions, Background, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 13 (Nov. 23, 2009).

<sup>17</sup> See Victor Ballinas, *Sudena da Muestras Claras de Que No se Subordinará al Control Civil: ONG*, LA JORNADA (Feb. 1, 2012), <http://www.jornada.unam.mx/2012/02/01/politica/012n3pol>.

executions, many allegedly perpetrated by Mexican security forces.<sup>18</sup> There has been a 70 percent increase in complaints of human rights violations between 2010-2011 compared to the previous level, the majority of which were filed registered against security forces, especially the Federal Police and Army.<sup>19</sup> The top categories are arbitrary arrest, torture, and extortion.<sup>20</sup> On an official visit to Mexico, the U.N. High Commissioner of Human Rights, Navi Pillay, expressed grave concern over the militarization<sup>21</sup> and expanded use of pre-trial house arrest; five U.N. bodies have recommended elimination of the practice as a violation of presumed innocence.<sup>22</sup> The Mexican government has refused to reform the law or practice. The Second Report on the Situation of Human Rights Defenders in the Americas of the IACHR documented 61 murders of defenders in Mexico during the drug war period 2006-2010,<sup>23</sup> and the National Network of Women Human Rights Defenders reports 17 female human rights defenders murdered from 2010 to date.<sup>24</sup> Another report documents dozens of attacks on female human rights defenders, many including gender-based forms of violence.<sup>25</sup>

18 The NCHR has registered 475 forced disappearances in September 2011, compared to some four to six cases in 2006.<sup>26</sup> Especially in disappearances, cases are widely underreported. Human Rights Ombudsman Raúl Plascencia noted that the federal government does not register forced disappearances, nor are they investigated in most cases.<sup>27</sup> The NCHR has begun a registry

<sup>18</sup> Human Rights Watch notes that the cases documented in its report are not isolated but stem from the security model imposed. HRW, *NEITHER RIGHTS NOR SECURITY*, *supra* note 7, at 5 (“The patterns of violations that emerge in the accounts of victims and eyewitnesses, an analysis of official data, and interviews with government officials, law enforcement officers, and civil society groups strongly suggest that the cases documented in this report are not isolated acts. Rather, they are examples of abusive practices endemic to the current public security strategy.”). Somewhat contradictorily, however, the report supports continued U.S. government aid to the Mexican security strategy by endorsing the Mérida Initiative.

<sup>19</sup> *Crecen 70% Quejas por Derechos Humanos: CNDH*, EL UNIVERSAL, Jul. 6, 2011, <http://www.eluniversal.com.mx/notas/777573.html>.

<sup>20</sup> *Id.*

<sup>21</sup> Pillay warned, “I understand that in extraordinary circumstances difficult decisions have to be taken—like the use of the military in public order functions—while a State builds the capacity to protect its citizens according to the rule of law. But such exceptional measures must remain true to their nature—extraordinary, and limited in time. And they must be carried out under civilian control and within the boundaries set by human rights standards and principles.” She decried the use of torture and urged the Government to ensure full investigation and sanction of such practices, saying they should “always be dealt with by civilian courts, irrespective of who the perpetrators were.” *UN Human Rights Chief Voices Concern Over High Level of Violence in Mexico*, UN NEWS CENTRE (July 9, 2011), <http://www.un.org/apps/news/story.asp?NewsID=38990&Cr=Mexico&Cr1>.

<sup>22</sup> See the interview with the U.N. High Commissioner in *El Universal: Natalia Gomez Quintero, Preocupa a ONU Alta Cifra de Abusos de DH*, EL UNIVERSAL (July 6, 2011), <http://www.eluniversal.com.mx/nacion/186868.html>.

<sup>23</sup> Second Report on the Situation of Human Rights Defenders in the Americas, Inter-Am. C.H.R., Report No. OEA/Ser.L./V/II, doc. 66 (2012), available at <http://www.oas.org/en/iachr/defenders/activities/activities.asp>.

<sup>24</sup> The National Network of Women Human Rights Defenders reports 17 WHRD killed in the country since 2010. See Laura Carlsen, *Mexican Women Human Rights Defenders Call for Full Investigation of Murder of Transgender Activist*, AMERICAS MEXICOBLOG (Mar. 23, 2012), <http://americasmexico.blogspot.mx/2012/03/mexican-women-human-rights-defenders.html>.

<sup>25</sup> Andrea Medina Rosas & Laura Carlsen, *Women Human Rights Defenders in Mexico Face Threats, Violence*, AMERICAS PROGRAM OF THE CENTER FOR INTL POL’Y (Dec. 14, 2011), <http://www.cipamericas.org/archives/5818>. See also *Iniciativa Mesoamericana de Defensoras, Violence Against Women Human Rights Defenders in Mesoamerica: An Assessment in Progress, 2010/2011 Update 26* (May 2011), [http://www.justassociates.org/documents/mesoamerica/diagnostico\\_defensora\\_2011.pdf](http://www.justassociates.org/documents/mesoamerica/diagnostico_defensora_2011.pdf).

<sup>26</sup> Liliana Alcántara, *Se Acaba Tiempo Para Revertir Abusos: CNDH*, EL UNIVERSAL, Dec. 9, 2011, <http://www.eluniversal.com.mx/notas/814989.html> (interview with Raúl Plascencia, Ombudsman of the National Commission on Human Rights).

<sup>27</sup> *Id.*

and investigations, but has not reached full coverage and the federal government approved a measure to begin a registry.<sup>28</sup>

¶9 Moreover, some major violations of human rights cannot be successfully prosecuted due to gaps in the law. Neither femicide, which has risen notably during the drug war period,<sup>29</sup> nor forced disappearances are typified as such under the law. Currently femicides and disappearances are registered as kidnappings or missing person reports. As a result, the kidnapping unit of the Attorney General's Office (PGR) is overwhelmed and forced disappearances are not counted. Forced disappearances are not classified as a specific crime under Mexican federal law.<sup>30</sup> Some Mexican states are thus moving to pass specific laws on forced disappearances and human rights groups in Mexico have called for a national law as well.<sup>31</sup>

¶10 According to the Ministry of Defense, the Army receives an average of four human rights complaints a day as a result of its involvement in the drug war.<sup>32</sup> The total number of complaints registered by the NCHR against the army since the start of the drug war under the Calderón administration is 5,055 by mid-2011; only 79 recommendations have been issued.<sup>33</sup> The Ministry of Defense has attempted to minimize the gravity of this situation, stating that due to its offensive against organized crime, "there are complaints that are presented by members of organized crime to defame this armed institute and therefore limit its operations."<sup>34</sup> However, this claim has not been substantiated, and investigations of most complaints are considerably delayed or limited.<sup>35</sup> There is every reason to view with alarm the number of government statements that associate complaints of human rights violations with links to drug trafficking, as

---

<sup>28</sup> Víctor Ballinas & Andrea Becerril, *Aprueba el Senado Ley para Crear el Registro de Extraviados y Desaparecidos*, LA JORNADA, Mar. 7, 2012, at 2, available at <http://www.jornada.unam.mx/2012/03/07/index.php?section=politica&article=002n1pol&partner=rss>, partial translation available at: AMERICAS MEXICOBLOG, <http://americasmexico.blogspot.mx/2012/03/drug-war-and-human-rights-mexico-senate.html>.

<sup>29</sup> The Chihuahua State government documents numbers of femicides, and reported 370 cases for 2010, and 282 cases in the first nine months of 2011. See Víctor Quintana, *Twin War*, AMERICAS PROGRAM OF THE CENTER FOR INTL POL'Y (May 12, 2011), <http://www.cipamericas.org/archives/5731>.

<sup>30</sup> *The Report of the Working Group on Enforced or Involuntary Disappearances: Mission to Mexico* notes the difficulties caused by the "absence of a general law that regulates all aspects of forced disappearance." U.N. Human Rights Council, Working Group on Involuntary or Forced Disappearances, *Mission to Mexico*, ¶ 12, U.N. Doc. A/HRC/19/58/Add.2 (Dec. 20, 2011), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf). Without the classification of forced disappearance as a specific crime on the federal level, the cases are handled along with kidnappings and missing persons and often not treated according to the gravity of the crime. *Id.* In a call to support a proposed state law for Nuevo Leon that would criminalize forced disappearance Amnesty International notes the current situation: "Mexico has ratified the International Convention for the Protection of All Persons from Enforced Disappearance which requires it to take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law. However, Mexico has failed so far to make crucial declarations under Articles 31 and 32 of the Convention—recognizing the competence of the Enforced Disappearances Committee to receive and consider communications from or on behalf of individuals claiming to be victims or by other states." See *Document - Mexico: Demand Law to Ban Enforced Disappearance*, AMNESTY INT'L (JAN. 17, 2012), <http://www.amnesty.org/en/library/asset/AMR41/003/2012/en/81fd35b0-1f0c-41c1-b262-7b12ebcd215d/amr410032012en.html>.

<sup>31</sup> *Forced Disappearances in Mexico Raise Significant Concern*, JUSTICE IN MEXICO PROJECT (Oct. 24, 2011), <http://justiceinmexico.org/2011/10/24/forced-disappearances-in-mexico-raise-significant-concern/>.

<sup>32</sup> Silvia Otero, *Por DH, Sedena Recibe 4 Quejas al Día: Informe*, EL UNIVERSAL, July 3, 2011, <http://www.eluniversal.com.mx/nacion/186760.html>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (author's translation).

<sup>35</sup> *Id.*

they point to an attitude of tainting or criminalizing human rights defenders, which puts them in greater jeopardy.

## II. PARADIGMS FOR SECURITY: THE NATIONAL SECURITY LAW AND CITIZEN SECURITY

¶11 Because of the explosive increase in violence and human rights violations under the enforcement/interdiction drug war model, Mexican human rights groups and citizen organizations have demanded an immediate change in the security strategy. The Movement for Peace with Justice and Dignity (MPJD), led by the poet Javier Sicilia whose son was brutally murdered in March of 2011, has formally called for an end to Calderón's drug war, a halt to the U.S.-funded Mérida Initiative and rejection of the administration's proposed reforms to the National Security Law.<sup>36</sup> The 2005 National Security Law places national security as the priority, and defines national security in Article 3: "For the effects of this Law, national security is understood as the actions destined to immediately and directly maintain the integrity, stability and permanence of the Mexican State..."<sup>37</sup>

¶12 The proposed reforms presented by President Calderón are aimed at institutionalizing the drug war model within this concept of national security and providing a stronger legal basis for the participation of the Armed Forces in the country. MPJD legal experts have criticized the 2005 National Security Law for the following reasons:

- (1) It legalizes presidential decisions to attack insecurity with repressive measures that react to symptoms rather than address causes.
- (2) It is unconstitutional since it redistributes public security and national security functions among the Armed Forces and the police without adequately defining both.
- (3) The Armed Forces would be allowed to coordinate public safety activities when the constitution clearly only allows them to participate as auxiliaries in crisis situations.
- (4) The incorporation of military personnel in public safety opens the door to substitute local and state authorities for federal Armed Forces and security personnel, which affects states' rights and sovereignty.
- (5) Federal security officials can declare states of exception, which permit authoritarian government.
- (6) Military personnel could be tried in civil courts only when the military decides it is appropriate.<sup>38</sup>

¶13 Experts within Mexico, including those associated with the National Autonomous University (UNAM), have been working on models of a law that would protect citizen and human security based on U.N. concepts; such models would replace the Mérida-Calderón concept of "national security" that seeks to protect State interests above a priority on public

<sup>36</sup> *Decálogo para la Discusión con el Poder Ejecutivo Federal Mesa 3: Revisión Integral de la Estrategia Nacional de Seguridad con Énfasis en Fortalecimiento del Tejido Social – Seguridad y Derechos Humanos, documento del Movimiento por la Paz con Justicia y Dignidad*, THE MOVEMENT FOR PEACE WITH JUSTICE AND DIGNITY (Sept. 9, 2011). Pamphlet, on file and translated by the author.

<sup>37</sup> Ley de Seguridad Nacional [L.S.N.] [National Security Law], art. 3, Diario Oficial de la Federación [D.O], 31 de Enero de 2005 (Mex.) (author's translation, in original: "Para efectos de esta Ley, por seguridad nacional se entienden las acciones destinadas de manera inmediata y directa a mantener la integridad, estabilidad y permanencia del Estado mexicano...").

<sup>38</sup> Laura Carlsen, *March Against Drug War Rejects National Security Law, Calls for Citizen Security*, AMERICAS PROGRAM OF THE CENTER FOR INTERNATIONAL POLICY (Aug. 17, 2011), <http://www.cipamericas.org/archives/5253>.

safety.<sup>39</sup> These models address the causes of insecurity in communities and seek long-lasting solutions to those problems, rather than proscribe repressive actions against crime. The IACHR utilizes the following definition of “citizen security”:

This group of rights includes the right to life, the right to physical integrity, the right to freedom, the right to due process and the right to the use and enjoyment of one’s property, without prejudice to other rights that will be specifically examined in the body of this report.<sup>40</sup>

### III. CITIZEN ACTIONS IN DEFENSE OF HUMAN RIGHTS AND FOR CITIZEN SECURITY

¶14 The precipitous rise in violence and human rights violations and the dysfunctional nature of the Mexican justice system have led directly to the filing and acceptance of numerous cases by international courts. The Inter-American Commission on Human Rights of the Organization of American States has received numerous Mexican cases and several have been passed up to the Inter-American Court of Human Rights, which has found against the Mexican government and issued recommendations. Many of these cases pre-date the Calderón drug war but indicate the ongoing situation of impunity that forms a backdrop for the current violence.

¶15 Mexico ratified the International Criminal Court’s Rome Statute on October 28, 2005. The ICC can accept cases if the State accused of crimes against humanity is deemed inactive, unwilling or unable to prosecute.<sup>41</sup> On November 25, 2011, a case against the Calderón administration claiming crimes against humanity under the current security policy was presented with more than 23,000 signatures—a record-breaking number for the ICC.<sup>42</sup> The case documents 470 instances of “crimes against humanity” including assassination, forced disappearance, torture and recruitment of minors.<sup>43</sup>

¶16 The response of the Calderón government was swift, angry, and legally flawed. In a communiqué, the Ministry of Foreign Relations stated that “[t]he Federal Government categorically rejects that security policy can constitute an international crime.”<sup>44</sup> To assert that a State security policy can *never* constitute a crime is unprecedented and patently ridiculous. The case is awaiting a decision on acceptance from the ICC and although unlikely to be accepted formally, proponents hope to raise the issues and perhaps have the country placed under observation, as happened in a similar case involving Colombia.

¶17 A similar effort has been undertaken before the non-binding Permanent People’s Tribunal (PPT), an international tribunal of conscience that formed as the successor to the Russell

<sup>39</sup> Ley de Seguridad Nacional [L.S.N.] [National Security Law], art. 3, Diario Oficial de la Federación [D.O], 31 de Enero de 2005 (Mex.).

<sup>40</sup> Rep. on Citizen Sec. and Hum. Rts., INTER-AMERICAN COMMISSION ON HUM. RTS., <http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.II.htm>.

<sup>41</sup> This is the definition of jurisdiction from the ICC. “The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. In addition, the ICC only tries those accused of the gravest crimes.” *ICC at a Glance*, INT’L CRIM. CT., <http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/>.

<sup>42</sup> See Fernando Camacho Servín, *Demandan a Calderón en La Haya por “Delitos de Lesa Humanidad,”* LA JORNADA (Nov. 26, 2011), <http://www.jornada.unam.mx/2011/11/26/politica/005n1pol>.

<sup>43</sup> *Id.* See also *Mexico Activists Seek ICC Investigation of Drugs War*, BBC NEWS, Nov. 25, 2011, <http://www.bbc.co.uk/news/world-latin-america-15899687>.

<sup>44</sup> Press Release, *Comunicado 372*, MEXICO MINISTRY OF FOREIGN RELATIONS, (Nov. 10, 2011), <http://saladeprensa.sre.gob.mx/index.php/es/comunicados/446-372>.



Tribunal. The PPT has agreed to form a Mexico chapter and receive documentation regarding the Mexican government's human rights violations.

#### IV. THE FALSE DILEMMA

¶18 The idea that security and human rights are a trade-off is pernicious to a rights-based society. There can be no security without human rights. The Mexican government's retort that criminals are the major violators of human rights minimizes government responsibility for ensuring a society that respects human rights and for preventing and punishing violations by state actors.

¶19 The drug war launched by the Calderón administration and supported by the U.S. Mérida initiative has led to a sharp increase in human rights violations and a general climate of violence and militarization. To build respect for human rights, Mexico must reform the current security model that posits a trade-off between rights and security and work to build citizen security based on human rights and democratic participation.