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CC: Sen. Patrick Leahy, Chair, Subcommittee on State, Foreign Operations, and Related Programs, U.S. Senate Committee on Appropriations
 Rep. Nita Lowey, Chair, Subcommittee on State, Foreign Operations and Related Programs, U.S. House of Representatives Committee on Appropriations

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RE: Human Rights Concerns to Inform the U.S. Department of State’s Merida Initiative Reporting on Mexico

In providing security assistance to Mexico under the Merida Initiative, the U.S. Congress recognized the Mexican government’s need to make substantive progress in its respect for human rights within the framework of its security operations.

As reflected in this memo, our organizations believe that the Mexican government has failed to make meaningful progress in the identified priority areas:

- **Ensuring that civilian prosecutors and judicial authorities are investigating and prosecuting members of the federal police and military forces:**
 - To date, only a **single** human rights violation perpetrated since 2007 by a member of the military has resulted in a trial and upheld conviction in a military court. Despite clear mandates under international law and the human rights requirements of the Merida Initiative, **none** of the numerous human rights violations perpetrated by the military during President Calderón’s administration have been tried by civilian prosecutors and

- judicial authorities. Although making military tribunals more transparent has value, it is critical that the U.S. State Department focus its attention, resources and capacity building efforts on supporting the full transfer (as required by Mexican law) of the investigation, prosecution and sanction of alleged human rights violations committed by the military from military to civilian jurisdiction.
- **Improve the transparency and accountability of federal police forces:**
 - Recent reforms and public security policies fail to incorporate effective mechanisms for citizen participation and accountability. The June 2009 law creating the new Federal Police lacks measures to improve transparency and accountability; the annual reports of the Secretary of Public Security highlight citizen participation as limited to the presentation of complaints; at the national, state and municipal levels, there exist insufficient mechanisms for citizen participation in the design, implementation and evaluation of public security policies; and there is a minimal focus on strengthening the forces who have the closest and most regular contact with the population—municipal police.
- **Enforcing the prohibition on the use of testimony obtained through torture:**
 - The use of torture to force confessions or other testimony continues to be a widespread practice. The State Department’s own 2009 Country Report on Human Rights Practice in Mexico states *“judges, particularly in areas that had not yet implemented the reforms, reportedly continued to allow statements coerced through torture to be used as evidence against the accused, a practice particularly subject to abuse because confessions were often the primary evidence in criminal conviction”*
- **Establishing a mechanism for regular consultations with human rights and civil society organizations to make recommendations concerning implementation of the Merida Initiative:**
 - The “Mechanism for Dialogue with Civil Society Organizations” has not been an effective consultation mechanism as it has provided no real opportunities for Mexican human rights and other civil society organizations to provide recommendations and evaluate the Merida Initiative in a way that would result in action and outcomes by the government.

We urge the State Department to carefully reflect the demonstrated lack of progress towards these critical requirements in its report to Congress and recommend that funding conditioned on progress in these areas not be released until concrete and measurable advances have occurred.

This memo is intended to complement and update our past memos,¹ as well as raise additional areas of serious concern to inform the State Department’s report to Congress regarding human rights requirements for Mexico contained within the Merida Initiative.²

As indicated in our memo of October 6, 2009, our organizations found the August 2009 Merida Initiative report issued by the U.S. State Department to Congress lacking vital substantive information to support the claim that the Mexican government has made progress to justify the release of the full amount of

¹ Memos and associated appendix documents were issued by the majority of this memo’s authors on January 21, 2009, July 24, 2009 and October 6, 2009.

² Included in Section 1406 of the Supplemental Appropriations Act, 2008 (P.L. 110-252); section 7045(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (division H of Public Law 111-8); Section 1108 of the 2009 Supplemental Appropriations Act (P.L. 111-32), and section 7045(e) of the Consolidated Appropriations Act, 2010 (division H of Public Law 111-117).

Merida funds. Points raised within this memo are intended to clarify mischaracterizations and errors within the “Mexico-Merida Initiative Report” authored by the State Department in August 2009.

Although various concerns highlighted in this and past memos may be absent from the State Department’s August 2009 report to Congress, they are unmistakably reflected in the State Department’s 2009 Country Report on Human Rights Practices in Mexico.³ This report identifies such problems as “unlawful killings by security forces; kidnappings; physical abuse...arbitrary arrests and detention; corruption, inefficiency, and lack of transparency that engendered impunity within the judicial system; confessions coerced through torture” as well as “multiple reports of forced disappearances by the army and police.” The report further states that “the CNDH [National Human Rights Commission] verified that army doctors or other members of the military falsified evidence to cover up abuses” and that “individuals [were] vulnerable to coercion to sign false statements before being presented to a judge.”

Statements made by numerous international, Mexican and U.S. human rights bodies reinforce the importance of implementing the human rights safeguards contained within the Merida Initiative. For example, in March 2010 the UN Human Rights Committee⁴ underscored its concern over ever more numerous reports of military human rights abuses and stated that Mexico, “must guarantee that all reports of human rights violations committed by the armed forces are duly investigated and judged by civilian authorities.”⁵ The Committee further expressed “its concern that under current law, great evidentiary weight is assigned to the first confessions made [by a detainee] to police agents or prosecutors and that the prosecution is not required to demonstrate that the statements were not made as a result of torture or cruel, inhuman, or degrading treatment.”⁶

(1) Merida Initiative Human Rights Requirement: Improving the transparency and accountability of federal police forces and working with state and municipal authorities to improve the transparency and accountability of state and municipal police forces through mechanisms including establishing police complaints commissions with authority and independence to receive complaints and carry out effective investigations;

While steps have been taken to vet the federal police forces, the National Police Registry is moving forward, and citizen participation councils exist, there is no evidence of their involvement in monitoring human rights abuses. For this and other reasons, we continue to be concerned about the lack of specific progress in improving the transparency and accountability of Mexico’s police forces.

- **The Federal Police lack clear mechanisms for transparency and accountability.**

³ Bureau of Democracy, Human Rights, and Labor, 2009 Country Reports on Human Rights Practices, March 11, 2010, available at www.state.gov/g/drl/rls/hrrpt/2009/wha/136119.htm.

⁴ The UN Human Rights Committee is composed of 18 internationally recognized, independent experts on civil and political rights. These statements were issued following the March 2010 review of Mexico’s compliance with the International Covenant on Civil and Political Rights,

⁵ Human Rights Committee, Concluding Observations: Mexico (March 22, 2010), UN Doc. CCPR/C/MEX/CO/5, para. 11. Our translation (*debe garantizar que todas las denuncias de violaciones de derechos humanos cometidas por las fuerzas armadas sean debidamente investigadas y juzgadas por las autoridades civiles*).

⁶ Id., para. 14. Our translation (*su preocupación de que bajo la ley actual, se asigna un gran valor probatorio a las primeras confesiones hechas ante un agente de policía o un fiscal y que la carga de la prueba de que las declaraciones no se hicieron como resultado de torturas o tratos crueles, inhumanos o degradantes no recae sobre la fiscalía*).

The law that established the Federal Police went into effect in June 2009. We have several concerns regarding this new law, including the lack of clarity in the Federal Police's investigative powers, the expanded powers of the police to intervene in communications as part of criminal investigations without the oversight or checks and balances of the public ministry, and the failure of the new law to include provisions to strengthen accountability and transparency.⁷

The only measures in this new law that address transparency and accountability issues are included in the section addressing disciplinary issues. This section (chapter 5) establishes that any abuse or violation of human or civil rights is considered an internal disciplinary issue and, therefore, transferred over to a federal police council composed exclusively of officials from the *Secretaria de Seguridad Publica* (Public Security Ministry, or SSP). Even cases that involve alleged human rights abuses against citizens lack citizen representatives or citizen oversight, nor is there a role for the National Human Rights Commission (CNDH). The law does not clearly establish that human rights violations will also be submitted for criminal investigations and CNDH investigations or establish the obligation of the Council to cooperate fully with such investigations.

In addition, this law's chapter on discipline⁸ does not include mechanisms to ensure transparency in the investigation, hearing, and sanction of a disciplinary issue. For example, there is no information regarding if or how the results of a complaint will be made public. The absence of reliable, detailed and publically available information on complaints, offenses, and outcomes of internal inquiries and criminal complaints continue to obstruct independent evaluation of accountability mechanisms. Instead, this section⁹ merely describes the role of the Federal Advisor to issue a resolution on the case within 20 working days after the issue has been resolved.

Additionally, human rights complaints filed with the National Human Rights Commission rarely result in effective criminal investigation of federal agents responsible for abuses. The SSP continue to regard only those complaints that result in public recommendations as demonstration of abuses committed, choosing to ignore the other cases which the CNDH handles by other procedures, such as conciliation agreements, but which also involve evidence of human rights violations. This partial and selective approach to CNDH actions misrepresents the scale of abuses and prevents full investigation of all allegations of abuses.

- **Citizen participation is limited to presenting complaints and no clear mechanisms have been established for citizen participation in the design, implementation and evaluation of public security policies.**

Citizen participation is an indispensable element to improve the transparency and accountability of government bodies, particularly through incorporating a citizen perspective in the design, implementation and evaluation of public policies. As is referenced in the August 2009 Merida Report, Mexico's National Development Plan promotes citizen participation and advisory councils in the design, implementation and evaluation of public policies. However, the annual reports from the Ministry of Public Security (SSP) show that citizen participation is almost completely reduced to presenting complaints and to collaborating with the police to prevent crime.

⁷ Insyde, "La nueva Ley de Policía Federal," Serie Cuadernos de Trabajo del Instituto para la Seguridad y la Democracia, A.C. (Insyde), Número 27, September 2009.

⁸ Section on discipline – chapter 5

⁹ Section 39 of Chapter 5

The Ministry of Public Security's National Plan 2008-2012¹⁰ includes within its objectives, lines of action and strategies the "participation of society in crime prevention, in the evaluation of the actions carried out and in communication with the bodies in charge of public security." According to the National Plan, this participation is focused on promoting a culture of respect for the law and on strengthening the links between the police and sectors of the population so that the police forces receive information that will help them in their job.

For example, in 2008 several councils were created with civil society organizations to monitor and evaluate the police. The objective of these bodies was to promote citizen participation in "the policies, programs and actions of the institutions responsible for public security in the three levels of the government." However, more than working towards the objective, the activities were focused on citizens to report ordinary crimes. From September to December 2008 there were more than 100 meetings in the 32 states to improve the mechanisms to present complaints of possible crimes, for requests for increased surveillance in risk areas and in crime prevention activities.

The SSP's Third Annual Report further illustrates this focus. One of the main efforts carried out by the SSP to provide more outreach to communities has been through the creation, development and consolidation of the "*Enlaces de Prevención*" (Prevention Connections) in each state. These bodies aim to bring the Federal Police and sectors of the population together for early intervention in crimes. The report includes the following achievements: the identification of Crime Areas based on citizen perception; receiving citizen complaints; and the implementation of several prevention activities.

Although the SSP recognizes the challenges of improving the levels of citizen trust, the National Plan and the Third Annual Report do not mention strengthening the procedures to investigate and sanction abuses committed by members of the police forces, how they would make these processes transparent or how they would incorporate a citizen perspective. The Third Annual Report contains no information about the number of complaints presented before the Internal Affairs office, the number of police who were investigated, how many police were sanctioned and what the sanction was.

The only activity in 2009 that includes citizen monitoring of the police is the citizen evaluation for six procedures regarding family visits for patients/prisoners in the Federal Center for Psychosocial Rehabilitation (a federal prison for mentally ill prisoners). Although the SSP's Third Annual Report mentions the establishment of 32 citizen observatories in the states (which replaced the citizen councils of 2008), no information is provided on how they function or the activities that were carried out.

- **There is a lack of policies to strengthen municipal police, which are the corporations that have the closest contact with the population.**

Public security policies are primarily directed to strengthen the Federal Police at the expense of the municipalities. The August 2009 Merida report includes information on the Municipal Public Security Subsidy (SUBSEMUN) which began in 2008 to support police professionalization. We wish to highlight that municipalities receiving this subsidy are chosen based not only on security needs but also on their ability to contribute 25% of the funds to the municipal subsidy. Currently only 206 out of Mexico's 2,440 municipalities receive this subsidy, excluding many municipalities with high and extreme levels of marginalization, including some with significant public security problems.

¹⁰ Ver <http://www.ssp.gob.mx/portalWebApp/ShowBinary?nodeId=/BEA%20Repository/414002>

The conditions on the use of these funds are so limited that in 2009 there was actually a significant under spending of the subsidy. In this year, the municipalities did not spend \$790 million pesos out of \$4.14 billion pesos that were allocated. For example, Ciudad Juarez failed to spend \$95 million pesos that it had received; the local government of Cuernavaca failed to spend over \$16 million pesos and the borough of Iztapalapa in the Federal District failed to spend \$95 million pesos of the money it had been given.¹¹

In order to provide/obtain a comprehensive assessment of the Mexican government's efforts to increase police transparency and accountability at all levels, we believe the US government should:

- Fully review the function of the citizen participation councils and observatories and the extent to which the citizens participating in said councils are able to function as external control mechanisms, including the ability to provide meaningful input into the development and implementation of public security policies and accountability mechanisms. This is particularly pertinent given the support provided through the Merida Initiative to said councils.
- Request information from the Mexican government regarding the number and nature of complaints presented before the Internal Affairs office of the Federal Police, the number of police who were investigated, how many police were sanctioned and what the sanction was.
- Request information from the Mexican government regarding the functioning of internal affairs offices at the state and municipal level in Mexico as well as the progress made on establishing the *Centros de Control de Confianza* (Evaluation Centers) at the state level.
- Request detailed information on the cases the Federal Police investigated by the CNDH and Public Prosecutor's Office (PGR) for alleged human rights violations and the outcomes of these proceedings.

2) Merida Initiative Human Rights Requirement: Establishing a mechanism for regular consultations among relevant Mexican Government authorities, Mexican human rights organizations and other relevant Mexican civil society organizations, to make recommendations concerning implementation of the Merida Initiative in accordance with Mexican and international law:

Participation in mechanism

In 2009, the Mexican organizations who are co-authors to this memo participated in the three meetings in Mexico City held by the Mexican government to discuss the Merida Initiative with civil society. We are aware that an additional meeting was held in Guadalajara, Jalisco in November 2009 and two meetings have taken place in 2010, one in Monterrey, Nuevo Leon on March 4 and one in Mexico City on April 29.

Due to scheduling conflicts, no organization who co-authors this memo was able to participate in the April 29 meeting in Mexico City. It should be noted that the web page created by the Mexican government to inform civil society on the Merida Initiative (www.iniciativamerida.gob.mx) does not include a calendar of future meetings; a clearly established calendar would make it easier for interested organizations to plan ahead and ensure that they will be able to attend these meetings, particularly for organizations not based in Mexico City. According to press reports, the Director of the Office for

¹¹ La Jornada. Andrea Becerra. "No gastaron un solo peso en seguridad 206 municipios con problemas de *narco*", 11 de febrero 2010.

Outreach to Civil Society within the SRE, Miguel Diaz Reynoso stated in the March meeting in Monterrey that informative meetings would be held every two to three weeks; there is no information available on the website that would suggest that these meetings have in fact occurred.¹²

Inadequacies of mechanism

Based on past participation in the meetings and the bulletins made available regarding the two meetings held in 2010, we reiterate our concern that the mechanism has not been a feasible consultation mechanism as it has provided no realistic opportunities for Mexican human rights and other civil society organizations to provide input and evaluate the Merida Initiative in a way that would result in any action by the government. Instead, the government has only presented information about the Merida Initiative without clear guidelines for providing feedback. A government press release affirms that the fundamental characteristics and functioning of the so called “Mechanism for Dialogue with Civil Society Organizations” were explained at the March meeting held in Monterrey; however, none of this information is available on the website, impeding organizations who did not attend this meeting from accessing this important information.¹³ To date, civil society’s role has been limited to being a recipient of information and asking questions but it has not been able to provide meaningful input or recommendations regarding the implementation of the Merida Initiative.

For the State Department to assess this mechanism and to promote its effectiveness, we believe it should:

- Request information from the Mexican government regarding all the channels through which civil society can provide input regarding the implementation of the Merida Initiative and the types of responses they can expect from SEGOB and SRE;
- Request information from the Mexican government regarding how the recommendations and concerns of consultation mechanism participants will be shared with Mexican and U.S authorities;
- Request that the Mexican government’s indicators to measure the fulfillment of the objectives of the Merida Initiative be provided to civil society so that organizations have a benchmark to use when developing their monitoring systems and establishing accountability mechanisms

(3) Merida Initiative Human Rights Requirement: Ensuring that civilian prosecutors and judicial authorities are investigating and prosecuting, in accordance with Mexican and international law, members of the federal police and military forces who have been credibly alleged to have committed violations of human rights, and the federal police and military forces are fully cooperating with the investigations;

Lack of investigation into increasing number of military abuses

¹² “Abre el gobierno federal dialogo con la sociedad sobre Iniciativa Merida,” Notimex, March 12, 2010.

¹³ “El gobierno de Mexico celebra la primera sesión de 2010 del mecanismo de dialogo con la sociedad civil sobre la instrumentación de la Iniciativa Mérida en la ciudad de Monterrey, Nuevo León,” March 8, 2010, Bulletin No. 100-8/03/2010. <http://www.iniciativamerida.gob.mx/pdf/Comunicado-Mecanismo-de-dialogo-con-la-sociedad-100308.pdf>

The escalation of reports of human rights abuse, noted in prior memos, has continued with Mexico's National Human Rights Commission (CNDH) having received over 3,430¹⁴ reports of human rights related complaints committed by members of the military since Felipe Calderón assumed the presidency in December 2006. Many of these abuses were reported to have taken place in the heavily militarized state of Chihuahua.¹⁵ Reports of violations—which include arbitrary detention, torture and unlawful killings—have increased by roughly 1000% during the last three years, rising from 182 complaints received by the National Human Rights Commission in 2006 to 1,791 in 2009.¹⁶ During this period, the CNDH has issued an unprecedented 51 recommendations to the Ministry of Defense (SEDENA).

According to official data, only a single military human rights violation committed during this same time period has resulted in a conviction after trial: this occurred when a soldier was found guilty of killing a civilian who failed to stop at a military checkpoint and was sentenced—in military court—to 9 months of prison.¹⁷ We provide this information in response to the statement made in the State Department's 2009 Merida Initiative report to Congress, which indicates that the State Department is seeking clarification regarding the number and nature of convictions for military abuses following the SEDENA Human Rights Directorate announcement at a July 2009 press conference that "since 2006 military courts had convicted 12 soldiers and were investigating an additional 52 military personnel for a variety of offenses."¹⁸ No government agency or representative asserts that any military abuse committed during the past three years has been tried by the civilian authorities, although this is what international law, as well as the corresponding human rights element in the Merida Initiative, requires.

Military judicial jurisdiction continues to be used for abuses committed by the military against civilians

In its November 2009 sentence in the case of Rosendo Radilla Pacheco vs. Mexico, the Inter-American Court of Human Rights confirmed Mexico's treaty obligations to ensure that military abuses are investigated and tried in civil courts, ordering Mexico to reform article 57 of its Code of Military Justice to guarantee that this occurs.¹⁹ Despite official assurances that the sentence issued by the Court will be fully implemented, this has not yet occurred. Apart from the Court's sentence, civil society

¹⁴ , <http://www.cndh.org.mx/index.htm> see annual reports from 2007-2009

¹⁵ Between March 2008 and September 2009, the Chihuahua State Human Rights Commission (*Comisión Estatal de Derechos Humanos*, CEDH) and a municipal complaints office in Ciudad Juarez received more than 1,300 complaints of military abuses.

¹⁶ See the corresponding annual reports of the National Human Rights Commission at www.cndh.org.mx.

¹⁷ See Document 100-243 issued by the Department of the Interior, Oct. 20, 2009, available at www.hrw.org/es/news/2009/11/20/carta-respondiendo-al-secretario-de-gobernacion-de-mexico-fernando-francisco-g-mez-m. The cited document identifies 9 cases of prosecutions (in military courts) for supposed human rights violations; however, only 3 correspond to violations committed after 2006; of these, only 2 have ended in convictions. One of these was a car accident that does not necessarily seem to be a human rights violation, leading to the conclusion that there has been only one conviction for military human rights violations committed during the current presidential administration: a sentence of 9 months for fatally shooting a civilian.

¹⁸ This statement is included on page 12 of the Mexico-Merida Initiative Report Responding to the requirements of Section 1406 of the Supplemental Appropriations Act, 2008 (PL 11-252) and Section 7045 of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2009 (Div. H, P.L. 111-8)

¹⁹ Radilla Pacheco vs. México, (ser. C) No. 209 (Nov. 23, 2009). This case was defended by the Mexican Commission for the Defense and Promotion of Human Rights and the Association of Family Members of the Disappeared and Victims of Human Rights Violations in Mexico.

organizations, UN bodies, foreign governments²⁰, and other actors have called on the Mexico government to establish effective civilian controls over the human rights abuses committed by members of the army.

These developments also come amid disturbing reminders of the Executive Branch's disregard for human rights in the framework of a war on drugs in which upwards of 22,700 people have been killed thus far.²¹ President Calderón has publicly asserted that more than 90% of these killings are of "criminals" being killed in shootouts,²² but the government lacks data on which to base this highly speculative claim. Because the vast majority of these killings are never fully investigated, there is no way to substantiate the assertion that more than 90% are criminals; in some recent known cases reported to organizations such as the CNDH, the victims are innocent people shot by the army or police or caught in the crossfire between criminal gangs.²³

Recent cases of military abuse

We include below one emblematic case of reported human rights abuses committed by members of the Mexican army in recent months. We note that the latter case was not documented by our organizations but it was reported in multiple media outlets. We also submit in Appendix A a list of emblematic cases we have included in past memos, updates on the cases (where possible) and additional cases that were not included in past memos. We note that we have only included cases regarding abuses by the military and federal police, as the language in the Merida Initiative only applies to these agencies. We continue to believe that state and municipal police bodies are responsible for the majority of human rights abuses by security forces in Mexico. For example, in the cases received by the Civilian Monitor of the Police and Other Security Forces (*Monitor Civil de la Policía y las Fuerzas de Seguridad Pública de la Montaña de Guerrero*) located in Tlapa, Guerrero, between 2007 and 2010 the majority of the abuses were perpetrated by the municipal preventative police or the state investigative police (*policía investigadora ministerial*).

- On December 29, 2009, ten armed soldiers in uniform arbitrarily detained Jose Angel Alvarado Herrera, his cousin Nitza Paola Alvarado Espinoza, who is 31 years old and a mother of three, and Rocio Irene Alvarado Reyes, who is 18 years old, near their home in the community of Benito Juárez in Buenaventura, Chihuahua. The family immediately reported what had happened to the community police and to the State Attorney General's Office in Nuevo Casas Grandes, but the civilian authorities refused to accept their complaint. It was not until December 31st when the Public Minister of Buenaventura accepted the complaint; that same day he informed the family that he had information that the three people were detained in the

²⁰ Aside from the human rights element included by the US Congress in the Merida Initiative on this topic, seven countries recommended to Mexico in its 2009 UN Universal Periodic Review that it cease investigating human rights abuses in military jurisdiction, including other Latin American countries (Peru and Uruguay).

²¹ Guerra antinarco suma 22 mil 700 asesinatos, El Universal, April 14, 2010, available at www.eluniversal.com.mx/estados/75515.html.

²² De criminales, 90% de las muertes en lucha contra el crimen: Calderón, La Crónica de Hoy, April 16, 2010, available at www.cronica.com.mx/nota.php?id_notas=500821.

²³ Some civil society organizations, including Centro Prodh, have expressed strong concerns regarding the corrosive effects of such a discourse – one that appears to treat the more than 20,000 civilian deaths as "acceptable" because the victims of these murders may themselves be guilty of some drug-related crime-charges against which they will never have the opportunity to defend themselves in court – has on human rights.

35th Infantry Battalion barracks and that they were being investigated by the army.²⁴ On February 3, Nitza was able to call one of her family members on the phone. She was crying and said, "Please help me, get me out of here, I'm scared" (*por favor ayudenme, saquenme de aqui, tengo miedo*). The line was subsequently cut.²⁵ The civilian authorities have knowledge of this call relatives informed Amnesty International that no efforts had been made to trace it. On February 4 members of the Mexican army visited the homes of the family members of the disappeared individuals. They told them in a threatening manner that they were looking for the people who were lodging complaints against the military. On February 20, 2010 the Military Attorney General's office took over the investigation, but relatives have not been provided with information on the investigation and have not had access to the case file. At the time of writing of this memo, the whereabouts of Jose Angel, Nitza and Rocio remain unknown.²⁶

To ensure substantive progress by authorities to investigate, prosecute, and, where appropriate, sanction members of the federal police and military forces who have been credibly alleged to have committed violations of human rights, we request that the U.S. State Department:

- Request from the Mexican government detailed, case-specific information, including name and rank of implicated military personnel, location and date of incident and status of the investigation, prosecution, and, where appropriate, the sanction of all military and federal police accused of human rights violations, including those cases referred to in this memo and its appendix and the previous memos submitted by our organizations to the State Department officials on January 21, 2009, July 24, 2009 and October 6, 2009.
- Request case-specific information from Mexican authorities regarding the number of human rights violations involving military personnel committed since December 2006 (the start of the Calderón administration) that are being investigated within civilian jurisdiction.
- Request information from the Mexican government on its efforts to reform the military penal code to ensure that all human rights violations allegedly committed by military personnel are investigated and tried by the civilian authorities from the moment the crime is reported.
- Urge Mexican authorities to establish effective civilian controls over the army and ensure that cases of human rights violations committed by security forces are immediately transferred to and remain in civilian jurisdiction.
- Request and publish detailed information on how the Mexican government ensures that military personnel credibly accused of human rights violations are preventively suspended while being investigated.
- Focus resources and attention on reforms of civilian law enforcement institutions and legal systems to ensure prompt and complete transfer of domestic counternarcotics and law enforcement activities from the military to civilian authorities.

²⁴ Amnesty International, Urgent Action 9/10 – "Three People Unlawfully Arrested by Army in Mexico", January 12, 2010. See also: CEDEHM, "Acción Urgente por la desaparición forzada a manos del Ejército de dos mujeres jóvenes y un hombre en Chihuahua", January 11, 2010.

<http://www.cencos.org/es/node/22437>

²⁵ Amnesty International, Urgent Action <http://www.amnestyusa.org/actioncenter/actions/uaa00910.pdf>

²⁶ This case has been documented by the Centro de Derechos Humanos de la Mujer, based in Chihuahua, Chihuahua and the Centro de Derechos Humanos Paso del Norte based in Ciudad Juárez, Chihuahua.

(4) Merida Initiative Human Rights Requirement: Enforcing the prohibition, in accordance with Mexican and international law, on the use of testimony obtained through torture or other ill-treatment.

The persistence of torture to obtain testimony in Mexico

In May 2009, the UN Subcommittee on the Prevention of Torture issued a lengthy report²⁷ regarding the visit it had made to Mexico in August and September 2008. The report identifies numerous structural flaws in the Mexican criminal justice system that facilitate and foment the use of torture. Although Mexican authorities sought to not to publish this report, it was subsequently made public following an NGO submission of a freedom of information request to the *Instituto Federal de Acceso a la Información Pública* (IFAI, or the Federal Institute for Access to Public Information) by the National Human Rights Network “All Human Rights for All”.

Among other concerns, this UN report cites the overly broad powers of the public prosecutor as contributing to the widespread use of torture to extract confessions used as evidence. The pervasiveness of this practice can be attributed to the fact that the detainee remains in the custody of the public prosecutor despite the prosecutor’s role as the accusing party in a criminal trial. This situation becomes more problematic considering the widespread abuse of *in flagrante* detention in which an individual is arbitrarily detained and then handed over to the public prosecutor instead of a judge. For these and other reasons, the UN Subcommittee has urged Mexican authorities to eliminate the excessive powers of prosecuting authorities in the pretrial stages and implement mechanisms to ensure that judicial authorities have custody of detainees and only statements made before a judge in the presence of a defense lawyer are admissible as evidence. As the State Department found in its 2009 country human rights report on Mexico, the UN also found that doctors working for the prosecution falsify medical certificates to cover up injuries from torture received during the time of arrest and transfer. The Subcommittee noted that according to the medical registry at the National Arraigo Center²⁸, approximately half of the detainees had recent injuries when they arrived at the center with an average of 17 different injuries in eight parts of the body.²⁹ Finally, the report provides a grim description of the conditions in several detention centers, in which acts of brutal torture, overcrowding and inhumane prison conditions were documented, factors that trigger violence, according to the Subcommittee.

Mexico’s response to numerous international bodies has been to offer more training courses for public officials in human rights. However, as we have noted on other occasions, it would be naive to believe that the chilling acts of torture documented by the Subcommittee were the product of a mere lack of training, as it does not require legal expertise to know that such acts are illegal. We acknowledge that training is a valid, preventative measure; but it cannot be the only response, which is the unfortunate reality in Mexico right now. Training is not a remedy once torture has taken place. The climate of impunity, as well as a criminal justice system that encourages torture to obtain information, must be addressed urgently. The lack of transparency and accountability previously highlighted is a key element to the continuing use of torture.

²⁷ <http://centroprodh.org.mx/2008/informesubtortura.pdf> United Nations Subcommittee for the Prevention of Torture, “Informe Sobre la Visita A Mexico del Subcomité para la Prevención de la Tortura y Otros Tratos o Penas Cruelles, Inhumanos o Degradantes”, May 29,2009.

²⁸ This Center is based in Mexico City and it is for people detained under arraigo (pre-charge detention) who have been accused of having links with organized crime.

²⁹ See paragraph 223 of the Subcommittee report.

The ongoing and widespread use of testimony obtained through torture is also acknowledged in the State Department's 2009 Country Report on Human Rights Practice in Mexico:

“Despite enactment of judicial reform legislation in June 2008, judges, particularly in areas that had not yet implemented the reforms, reportedly continued to allow statements coerced through torture to be used as evidence against the accused, a practice particularly subject to abuse because confessions were often the primary evidence in criminal convictions. NGOs asserted that judges often gave greater evidentiary value to the first declaration of a defendant, often given in the absence of legal representation. This provided prosecutors an incentive to obtain an incriminating first confession and made it difficult for defendants to disavow such declarations.”

Judicial reform that would address the use of torture has not been fully implemented

In its 2009 Merida Initiative report to Congress, the State Department's evaluation of Mexico's legal prohibitions on torture (pp. 13-14) fails to take into account that the reform to Mexico's criminal justice system that would help to diminish reliance on confessions obtained under torture has an eight year period to be fully implemented. To date, only 13 of Mexico's 31 states plus the Federal District have taken steps toward the implementation of the reform in the established time frame.³⁰ Furthermore, the constitutional reforms allow for federal organized crime offences to continue to be prosecuted and tried in legal proceedings largely similar to the pre-existing judicial arrangements, including such measures as *arraigo* and admissibility of statements made prior to presentation before a judge.

While the current (pre-reform) justice system persists, confessions obtained by non-judicial authorities continue to have a significant and often decisive weight in the consideration of the alleged guilt of accused individuals, providing a strong incentive for the authorities who have pre-trial contact with a detained person (e.g., agents of the public prosecutor (*ministerio público*)) to obtain a confession through coercion. The Mexican human rights organizations signing this memo continue to receive frequent reports of torture used to extract confessions or obtain information for the purposes of investigation.

Torture by the military

On this note, we observe that page 15 of the State Department's 2009 Merida Initiative report to Congress identifies 29 complaints of torture registered against the federal public prosecutor (Attorney General's Office) before the National Human Rights Commission. However, this figure is a significant underrepresentation for two reasons. First, the Commission has varied its definition of torture over the years and currently applies a standard that excludes from this definition many acts that constitute torture under international law. Some acts that constitute torture are instead classified by the Commission as cruel, inhuman, and degrading treatment. In 2009 alone, the Commission received 1105 complaints under this category.³¹ Second, this figure does not include the number of complaints received against SEDENA for torture – which accounts for 48 cases in the past 3 years (1 in 2007, 19 in 2008, 28 in 2009).³² All of the foregoing represents only a small portion of actual torture cases, since many victims are threatened to prevent them from reporting torture. Various organizations have

³⁰ David Shirk, “Judicial Reform in Mexico, Change and Challenges in the Justice Sector,” Trans-border Institute, University of San Diego, May 2010.

³¹ 2009 Annual Report of the National Human Rights Commission, available at www.cndh.org.mx.

³² See the corresponding annual reports of the National Human Rights Commission at www.cndh.org.mx.

published documents that indicate the torture is used by the military personnel against criminal suspects.³³ Further compounding the issue, many other victims do not trust the authorities or the CNDH to receive the complaint or conduct a full enquiry. Even when a complaint is opened these are usually investigated as lesser offences, such as abuse of power, rather than torture. It is not uncommon among the cases reported to the Mexican organizations who co-author this memo that authorities refuse to receive complaints of torture.

Given that torture by municipal, state and federal agents continues to be a practice widely used to extract confessions in Mexico, we urge the State Department to:

- Obtain a list of the number of complaints received by the CNDH and state-level human rights commissions of torture by the Mexican military and federal, state and municipal police in which it is alleged that torture or other ill-treatment was used with the explicit intent of extracting confessions.³⁴
- Request from the Mexican government information on the number of convictions against federal, state and municipal security agents for acts of torture since December 2006.
- Request the Mexican government provide information from federal and state courts on the number of cases in which defense lawyers filed evidence of alleged torture or ill-treatment suffered by their clients while in military or police custody and the number of these cases which resulted in criminal enquiries.
- Request from the Mexican government information on any reparations given to any survivor of torture or their families who were afflicted by federal, state, or municipal security agents.

³³ <http://www.amnesty.org/en/library/info/AMR41/058/2009/en>

³⁴ We feel it is relevant to ask for information on cases regarding other “ill treatment”, for example on complaints that may be classified under cruel and inhumane treatment as some states, such as Guerrero, do not included torture in their penal code.