

To: U.S. Department of State

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CC: U.S. Congress

Sen. Patrick Leahy, Chair, Subcommittee on State, Foreign Operations, and Related Programs, U.S.

Senate Committee on Appropriations

Sen. Lindsey Graham, Ranking Member, Subcommittee on State, Foreign Operations, and Related Programs, U.S. Senate Committee on Appropriations

Rep. Kay Granger, Chair, Subcommittee on State, Foreign Operations and Related Programs, U.S. House of Representatives Committee on Appropriations

Rep. Nita Lowey, Ranking Member, Subcommittee on State, Foreign Operations and Related Programs, U.S. House of Representatives Committee on Appropriations

From: US and Mexican NGOs

Amnesty International USA, Ciudadanos en Apoyo a los Derechos Humanos, Fundar Centro de Análisis e Investigación, Human Rights Watch, Latin America Working Group, Miguel Agustín Pro Juárez Human Rights Center, Robert F. Kennedy Center for Human Rights, Tlachinollan Human Rights Center, Washington Office on Latin America

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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 security operations. As this memo will demonstrate, our research shows that the Mexican government has failed to make meaningful progress in the identified priority areas.

The Mexican government has taken some steps to comply with the human rights requirements, such as the transfer of a handful of individual cases of abuse out of military jurisdiction and the passage of protocols regulating the use of force. However, the extremely limited number of cases of abuse in which there has been adequate investigations while there continues to be ongoing human rights violations committed by security forces demonstrate that these are isolated efforts that have not changed overall patterns of abuse and impunity.

The U.S. State Department's report offers a vital opportunity to provide a thorough, accurate assessment of these important human rights benchmarks, and to press for measurable progress on the part of the Mexican government, particularly before President Felipe Calderón leaves office. Indeed, the best way for the U.S. to reinforce the importance of human rights, accountability, and transparency in its bilateral relations with Mexico, and advance the interests of both countries, is to enforce the conditions it has set out. Our assessment of the conditions is as follows:

I. Improve the transparency and accountability of federal police forces and work 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;

We continue to be concerned about the lack of progress in improving the transparency and accountability of Mexico's police forces. While steps have been taken to vet the federal and state police forces and citizen participation councils exist, human rights violations by Mexican police forces continue to be widespread. We are not aware of any case in which a federal police agent has been found guilty by a civilian judge for a human rights violation. In addition to a lack of effective prosecutions, existing internal accountability mechanisms remain ineffective.

Human rights violations by the federal police

As the Federal Police have grown¹ and their role in counter drug operations has expanded, complaints against officers for human rights violations have increased substantially. In 2011, the National Human Rights Commission (CNDH) received 767 complaints of human rights violations by the federal police, up from 595 complaints in 2010 and 141 complaints in 2009.

Despite efforts at reform, recent cases suggest that the Federal Police continue to commit serious abuses, including torture, arbitrary detention and extrajudicial executions.² For example, CNDH special investigations into the Federal Police's actions during the protest of students from the Ayotzinapa Rural School in Chilpancingo, Guerrero on December 12, 2011 found that the 70 federal police officers, as well as some 90 state-level investigative and preventative police, had used unlawful and excessive force against the unarmed protesters, and that they killed two students, arbitrarily detained 42 individuals, including children, beat 24 of them, and tortured one student.³ To date, no member of the Federal Police involved in the incident has been charged.

In a previous incident on October 29, 2010, Federal Police agents were attempting to detain students from the Autonomous University in Ciudad Juarez during a march when two agents shot at the students, seriously wounding one of them.⁴

Accountability mechanisms

A central component of the Mexican government's efforts to vet the country's police forces is the evaluation and confidence centers (*centros de control de confianza*). As leverage to promote accountability at the municipal level, local governments can only qualify to receive federal funds in the Municipal Public

¹ From 2006- 2009, the budget for the Federal Police almost quadrupled, from 4 billion pesos in 2006 to 15 billion in 2009. The Federal Police is currently composed of approximately 36,000 officers.

² See for example CNDH recommendation 45/2011 and the cases of Adrián Pérez Ríos and Arnulfo Antunez. Sandoval in Human Rights Watch, *Neither Rights Nor Security*, November 9, 2011, <http://www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0>.

³ CNDH recommendation No. 1 VG/2012 <http://www.cndh.org.mx/node/694>

⁴ CNDH recommendation 48/2011. Detailed case information on the Ayotzinapa case is available from the Tlachinollan Human Rights Center: <http://www.tlachinollan.org/Ayotzi.html>

Security Subsidy (SUBSEMUN) program if they submit their officers to undergo evaluations in these centers.

However, the pace of implementation has been slow. In the three years since these evaluation centers began operation, only 15.5 percent of Mexico's more than 450,000 all federal and state law enforcement personnel have been evaluated. As of September 2011, approximately 50 percent of those evaluated passed their exam and one-third of these officers failed the exam. The results of thousands more police are still pending.⁵ In addition to the slow pace of implementation, we are deeply concerned about the Mexican government's almost exclusive focus on these exams as a tool to vet forces, and the exams' over-reliance on polygraph machines in the evaluation process.

Even when these limited exams work, they still focus exclusively on weeding out "bad apples" within the law enforcement bodies, rather than strengthening internal control mechanisms to address the institutional weaknesses that have allowed corruption and abuse to flourish. Furthermore, the exams fail to detect or prevent human rights violations. The State Department's report submitted to Congress in September 2010 on the four human rights requirements in the Merida Initiative affirms that "while the vetting is focused on corruption, this system could be further refined to detect human rights abuses." To date, no modification to detect human rights abuses has taken place.

Moreover, in several states, efforts to weed out corruption in local police forces—often known as *depuraciones* or purification—have themselves led to grave abuses committed against officials, including arbitrary arrests and torture. For example, in October 2011, hundreds of local police officers in Nuevo León were detained by federal and state security forces for alleged ties to organized crime. According to the officers and their families, they were taken to *arraigo* centers where dozens were subjected to torture and cruel, inhuman, and degrading treatment, including beatings with bats, electric shocks, asphyxiation with plastic bags and sexual assault.⁶ It is critical that efforts to reform and modernize Mexico's state and local police not reproduce the very abusive practices they aim to eradicate.

National and state human rights commissions

At the federal and at the state level, human rights commissions have shown themselves to be relatively ineffective as external control mechanisms over police forces. For example, an analysis of compliance with the eight recommendations issued by the CNDH involving human rights violations committed by the Federal Police in 2009 and 2010 showed that none of the cases had resulted in either administrative or criminal sanctions for the police officers involved.⁷ The CNDH closes the vast majority of the complaints

⁵ Sistema Nacional de Seguridad Pública, "Estatus de Resultados de Evaluaciones de Control de Confianza y Metas para Mayo 2012."

⁶ "Las detenciones de cientos de policías son una muestra más de arbitrariedad que no ayudará a pacificar nuestro Estado," Ciudadanos en Apoyo a los Derechos Humanos, press release 1110/033, October 7, 2011, http://www.cadhac.org/derechos_humanos/las-detenciones-de-cientos-de-policias-son-una-muestra-mas-de-arbitrariedad/.

⁷ CNDH, "2010 Informe de Actividades," January 2011, <http://www.cndh.org.mx/node/120>. See CNDH Recommendations 1/2010; 13/2010; 23/2010; 32/2010; 49/2010; 65/2010; 43/2009; 72/2009. The 2011 report includes information on compliance of previous recommendations issued by the Commission. Of the eight cases, the Internal Control Unit (*Órgano Interno de Control*) within the Federal Police is either still investigating the cases for possible administrative sanctions or the cases are closed. The PGR has not reported to the CNDH of a criminal sanction for any of the police implicated in five of these cases where the CNDH indicated that a preliminary investigation should be done.

through procedures such as providing guidance to the complainant, declaring lack of material to continue, or through settlement, and does so because the complainant withdrew the complaint or did not follow it up (which may indicate that he/she was threatened) or the Commission lacks jurisdiction, among other reasons. Of the reasons mentioned above, the most frequent pathway used by the Commission to close a complaint is to provide "guidance" to the victim. In 2010, over 50% of complaints concluded against all federal agencies (not just security forces) were closed through guidance to the victim. It is worth noting that the closure of a complaint through guidance is not sufficient to conclude that there were no abuses. To lodge, track and obtain a recommendation in a complaint to the CNDH is not a simple process and many victims lack the knowledge to do it. If in the original file the victim fails to categorize the events properly, it is likely that the CNDH will conclude the complaint through guidance. At the same time, as of 2011, the CNDH has new investigative powers, but these will not necessarily translate to fulfillment of the recommendations resulting from them.⁸

Citizen participation councils

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. Effective citizen participation should also go well beyond presenting complaints and collaborating with the police to prevent crime. In this regard, in 2010 and 2011, several Mexican organizations and public security experts participated in a series of dialogues on public security with a human rights focus with members of Mexico's Chamber of Deputies. One concrete proposal from these discussions was to include five members of civil society as counselors for the National Public Security Council (*Consejo Nacional de Seguridad Pública*). These counselors would design, monitor and vote on whether or not an accountability and transparency program for the federal Ministry of Security (SSP) was in fact in place. The proposal for citizen counselors did not move forward in the last legislative session. This is one example of the challenges for civil society in reaching even minimal agreements with Mexican authorities on how to improve transparency in the evaluation of the SSP. Similarly, it illustrates the resistance by federal authorities to enact even symbolic reforms that increase citizen participation in the realm of security policies.

Lack of accountability and transparency for state and municipal police

Police forces at the state and municipal level continue to be primary violators of human rights. Documentation by civil society groups in the region of La Montaña in the state of Guerrero provides valuable insight into the persistent failure of accountability and transparency mechanisms at the state and local level. From November 2007 to May 2011 the organizations documented 353 cases of human rights violations by the 26 police institutions and armed forces operating in the La Montaña region. The main violations documented were: arbitrary detention, extortion, delays in being brought before a judge, wrongful and/or excessive fines, cruel, inhuman, and degrading treatment and unauthorized home searches. These findings also identify the relatively small Ministerial Investigative Police (*Policía Investigadora Ministerial*, PIM), with just 30 agents, as responsible for 44 percent of the abuses. The monitoring organizations attributed the PIM's record to its weak internal and external control mechanisms

⁸ For instance, in the Ayotzinapa police abuse case, the Commission conducted a special investigation on gross human rights violations. However, it is not fully monitoring institutional responses and follow-up to the recommendations presented in this report.

and a lack of accountability. The PIM's discretionary powers, the ineffectiveness of the supervision and sanction mechanisms that currently exist, and the design of the judicial system, which emphasizes the role of the ministerial police in investigations, have all contributed to the failure to supervise and sanction police actions.

II. Conduct regular consultations with Mexican human rights organizations and other relevant Mexican civil society organizations on recommendations for the implementation of the Merida Initiative.⁹

In our previous memos, we reported that civil society consultations under the Merida framework had been ineffective because they were held almost exclusively in Mexico City, without advanced notice, avenues to provide input in shaping the agenda, and follow-up. The eighth and most recent consultation, held on February 16, 2012, took place seven months after the previous session and with no follow-up in between, and did not provide a space for civil society to provide input in shaping the agenda or feedback regarding recommendations.¹⁰ Given the absence of a meaningful consultation mechanism, many human rights groups in Mexico have stopped participating in these sessions.

III. Ensure 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 violated internationally recognized human rights, and the Federal police and military forces are fully cooperating with the investigations;

Human rights violations by the military

From December 1, 2006 through June 8, 2012, the CNDH has received 6,768 complaints concerning human rights violations perpetrated by personnel of the Mexican military (SEDENA). According to the CNDH's annual reports, complaints of abuses committed by SEDENA personnel increased from 367 in 2007 (the first year of the Calderón administration) to 1,695 in 2011.¹¹ In more than 100 of these cases, the CNDH conducted an in-depth investigation of the complaints and issued reports known as "recommendations," concluding that members of the military had committed human rights violations, including extrajudicial killings, enforced disappearances, and torture. The CNDH arrived at settlements in more than 200 other cases. In just five cases, after investigating, the CNDH issued documents certifying "non-responsibility"¹²

⁹ Unfortunately, this requirement has been removed from FY2012 State and Foreign Operations Appropriations legislation.

¹⁰ "El gobierno de México celebra la séptima sesión del mecanismo de diálogo con al sociedad civil sobre la instrumentación de la Iniciativa Mérida," communiqué of Secretaría de Relaciones Exteriores, July 27, 2011, http://www.sre.gob.mx/csociedad_viejo/contenido/comunicados/2011/jul/cp_265.html.

¹¹ CNDH, "2007 Informe de Actividades," January 2008, <http://www.cndh.org.mx/node/120>, p. 47; CNDH "2010 Informe de Actividades;" and "2011 Informe de Actividades," January 2011, p. 11, <http://www.cndh.org.mx/node/120>

¹² Rules of Procedure of the CNDH, 2003, <http://www.cndh.org.mx/node/26>, Art. 141. 6

or lack of proof of human rights violations.¹³ At the same time, the Navy, a separate military branch, was the subject of 495 complaints to the CNDH in 2011, up from 31 in 2007, a sixteen-fold increase.¹⁴

The Inter-American Court of Human Rights has issued decisions in four cases since 2009 mandating that the military justice system should not be used to investigate or prosecute human rights violations alleged to have been committed by the military and that Article 57 of the Military Code of Justice must be reformed accordingly. In July 2011, in a ruling derived from the Inter-American Court's judgment in the enforced disappearance case of Radilla Pacheco vs. Mexico, the México's Supreme Court determined that Mexico's courts are obligated to comply with the decisions of the Inter-American Court regarding military jurisdiction. In the Radilla case, the Inter-American Court had said that, "[r]egarding situations that violate the human rights of civilians, military jurisdiction cannot operate under any circumstance."¹⁵

However, the July 2011 determination of the Supreme Court did not set a legally binding precedent for future cases involving alleged military abuses, as it was not a case judgment that followed the Mexican legal system's rules for creating jurisprudence. To set legal precedent for future cases, the Supreme Court either needs to reach a similar ruling in five consecutive cases or issue an interpretation of a law that has been interpreted differently by lower level courts (what is known as a thesis of jurisprudence).¹⁶ In June 2012, the Court stated that it is reviewing 28 cases which raise a question of the use of military jurisdiction, and has ordered all lower courts not to issue final resolutions that involve the transfer of cases of human rights violations from military to civilian jurisdiction until it has resolved the legal question presented by these cases.¹⁷

In a speech on December 9, 2011, President Calderón stated that he had instructed Mexico's Interior Minister to provide the Senate with recommendations for "drafting the legislation [to reform the Military Code of Justice]...and adapting it to the criteria of the [July 2011 determination of the] Supreme Court." He also said he had instructed his Attorney General to work with the Armed Forces to facilitate the transfer to civilian jurisdiction of cases in which soldiers were alleged to have committed human rights abuses.¹⁸

¹³ The CNDH resolves the vast majority of complaints received through procedures other than investigating and issuing recommendations or documents certifying non-responsibility; that is, the lack of a recommendation is not meant to demonstrate the lack of an abuse. See Secretaría General de Defensa, "SITUACIÓN DE QUEJAS Y RECOMENDACIONES," <http://www.sedena.gob.mx/images/stories/D.H/JUN2012/QUEJASRECOMENDACIONES8.pdf>

¹⁴ CNDH, "2007 Informe de Actividades," p. 741 and CNDH "2010 Informe de Actividades," p. 11), <http://www.cndh.org.mx/node/120>.

¹⁵ Inter-American Court, Case de Radilla Pacheco v. Mexico, Judgment of November 23, 2009, Inter-Am.Ct.H.R., Series C No. 209. Corte Interamericana de Derechos Humanos, Caso Radilla Pacheco v. México, Sentencia del 23 de noviembre de 2009, Corte I.D.H., Serie C N.º 209, http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf, http://www.rtdh.eu/pdf/seriec_209_ing.pdf

¹⁶ Human Rights Watch, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, April 2009, http://www.hrw.org/sites/default/files/reports/mexico0409web_o.pdf.

¹⁷ Supreme Court, "ACUERDO GENERAL NÚMERO 6/2012," May 7, 2012, http://www.scjn.gob.mx/Transparencia/XIV%20Acudos%20Gnrls%20Plenarios%20Juris%20Temp%20Vigentes/AGP-6-12_v2.pdf.

¹⁸ "President Calderón at the Awarding of the 2011 National Human Rights Prize" (El Presidente Calderón en la Entrega del Premio Nacional de Derechos Humanos 2011), speech, December 9, 2011, <http://www.presidencia.gob.mx/2011/12/el-presidente-calderon-en-la-entrega-del-premio-nacional-de-derechos-humanos-2011/>

In April 2012, the Mexican Senate's Justice Commission approved draft legislation to reform the Military Code of Justice. This proposed legislation required all cases of alleged human rights violations to be transferred to the civilian justice system. However, party leaders in the Mexican Senate blocked the bill from coming to a vote prior to the end of the legislative period. The president of the Mexican Senate's justice committee explained that high-ranking military officials had expressed their disagreement with the draft legislation's inclusion of the term "human rights violations."¹⁹ Future discussions on reforming the Military Code of Justice will not take place until after the new members of the Mexican Congress take office in September 2012.²⁰

The Calderón government and the Mexican military have publicly claimed that many cases of military abuses are being transferred to civilian jurisdiction, demonstrating a shifting "tendency" in how these cases are handled. However, in spite of the Supreme Court ruling and the public commitments made by Calderón, cases of alleged military abuses against civilians continue to be sent almost exclusively to military jurisdiction. Mexican government officials provided a list of only eight cases that have been transferred from military to civilian jurisdiction during the Calderón administration, four of which were mandated by the rulings of the Inter-American Court. According to the State Department's own annual human rights report released in May 2012, "[i]n practice civilian courts generally ceded jurisdiction to the military in cases where military personnel stood accused of human rights violations committed against civilians" and only two human rights cases involving the military were transferred to civilian jurisdiction during 2011.²¹ In contrast to these cases, the military prosecutor's office opened nearly 3,700 investigations into military personnel for possible human rights abuses against civilians from 2007 to mid-2011.²²

As further evidence of the military's reluctance to comply with the Supreme Court decision, the military has challenged cases in which civilians petition for investigations to be transferred to civilian courts. This is clearly illustrated in the case of Bonfilio Rubio Villegas, a young indigenous man who was indiscriminately shot and killed by members of the armed forces when the bus in which he was traveling drove away after he was stopped and examine at a military checkpoint in 2009. Although a federal judge had determined that the case should be tried in civilian jurisdiction, the army appealed the court ruling, arguing that neither the Supreme Court nor the Inter-American Court rulings on this issue were binding upon the military, that the Supreme Court's decision was "illegal" and "lacked validity," and that Rubio's killing did not constitute a human rights violation. This case is currently before the Supreme Court, where it is one of the at least 28 cases involving questions of military jurisdiction pending a resolution. In a similar vein, Mexico's Military

¹⁹ Andrea Becerril and Victor Ballinas, "Congelado, el código de justicia castrense," *La Jornada*, April 26, 2012. <http://www.jornada.unam.mx/2012/04/26/politica/009n2pol>.

²⁰ Although this draft bill was approved in committee, it was not signed by senators. In effect, this means that the entering members of Congress will need to go back to square one when discussing this legislation. Andrea Becerril and Victor Ballinas, "Beltrones y González Morfín abortaron reforma a ley militar," *La Jornada*, May 1, 2012. <http://www.jornada.unam.mx/2012/05/01/politica/018n1pol>

²¹ United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011, "Mexico," May 24, 2012, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186528, p. 11.

²² Human Rights Watch, *Neither Rights Nor Security*, p. 10. Much of the forthcoming information is drawn from the report's chapter on torture.

Attorney General has publicly argued that unless the Military Code of Justice is reformed, the practice of investigating and prosecuting such cases in military jurisdiction will not change.²³

To date, none of the cases transferred to civilian jurisdiction, including the cases in which the Inter-American Court issued rulings, have led to the sanction of the military personnel responsible. According to a May 2012 report issued by the Mexican military, 38 soldiers have been sentenced by military courts for human right abuses. This report reflects that eleven of these convictions apply to cases which occurred prior to the Calderón administration and that at least 19 of the convictions for cases that occurred during the Calderón administration are subject to appeals.²⁴

IV. Enforce the prohibition, in accordance with Mexican and international law, on the use of testimony obtained through torture or other ill-treatment.

The persistent use of torture to obtain testimony

Recent reports by Mexican and international human rights organizations and UN bodies demonstrate that the use of torture to obtain confessions continues to be a widespread practice in Mexico. Mexico's security forces' reliance on torture to extract information and confessions has persisted, and indeed increased, in part because of public security policies that put a greater stress on the number of detentions and the ability to obtain confessions than the quality of investigations into crimes. This is reflected in the growing number of complaints of torture and ill-treatment received by the CNDH, increasing from 4 complaints of torture in 2007 to 42 complaints in 2011 and from 388 complaints of ill-treatment in 2007 to 1627 in 2011.²⁵ Of the 110 complaints of torture received by the CNDH from 2007 to 2011, 31 have resulted in CNDH recommendations that conclude that federal authorities have committed torture, while 57 remain under consideration. Of the total 4,731 complaints of ill-treatment received during the same time period, only 83 have resulted in recommendations.²⁶

Impunity prevails in cases of torture. Human Rights Watch documented more than 170 cases of torture in two years of research from 2009 to 2011 in five states, including numerous cases in which torture was used to coerce confessions.²⁷ Human Rights Watch states, "In all five states surveyed – Baja California, Chihuahua, Guerrero, Nuevo León, and Tabasco – Human Rights Watch found that security forces systematically use torture to obtain forced confessions from detainees." The organization found that, "according to information requested from state prosecutor's offices in the five states surveyed, there were hundreds of complaints of torture and cruel, inhuman, or degrading treatment to state human rights commissions. But not a single official in these states has been convicted on charges of torture."

²³ Detailed case information is available from the Tlachinollan Human Rights Center: <http://www.tlachinollan.org/bonfilio.html>

²⁴ http://www.sedena.gob.mx/images/stories/D.H/JUN2012/PROCESADOS_Y_SENTENCIADOS11.pdf

²⁵ However, it is important to note that the CNDH records are not a comprehensive record of allegations of torture and ill treatment by all public officials as most cases of abuse by state level officials would not be sent to the CNDH, but instead remain with the state level human rights commissions.

²⁶ Information provided to Amnesty International by the CNDH on January 30, 2012. Also, see CNDH reports of activities: www.cndh.org.mx/node/120

²⁷ Human Rights Watch, *Neither Rights Nor Security*, p. 28.

In the cases documented by Human Rights Watch, clear patterns were identified, including that “many victims were detained arbitrarily under the pretext of being caught in the act of committing a crime, and then held unlawfully and unacknowledged for hours or days before being handed over to prosecutors. During this period of ‘enforced disappearance’ – in which victims were often held incommunicado on military bases, police stations, or other illegal detention facilities – detainees were tortured to obtain information about organized crime and to confess to belonging to criminal groups. Their confessions often served to justify security forces’ illegal arrests and as the main evidence in criminal charges against them filed by prosecutors.”²⁸

Complicity of Justice Officials and Medical Examiners

Although the Mexican government has committed to utilize the Istanbul Protocol to document and investigate torture, the protocol is rarely applied. Reforms, including measures in the constitutional reform adopted in 2008, have failed to effectively prevent and punish torture because they have either not entered into force, or are undermined by conflicting state-level codes²⁹ or practices. In this context, a wide array of justice system officials have been implicated as complicit or directly involved in torture. They include judges who admit evidence that was likely to have been obtained through torture, prosecutors who obtain “confessions” from defendants who are being held incommunicado on military bases, and medical experts who omit or play down signs of physical injuries when they examine detainees.”³⁰

Medical examinations that accurately record the physical condition of detainees are a key safeguard for preventing torture and ensuring that acts of torture are documented and punished.³¹ However, a report by the UN Subcommittee on the Prevention of Torture issued in May 2009 found that doctors working for public prosecutors’ offices falsify medical certificates to cover up injuries from torture received during the time of arrest and transfer by either downplaying or failing to document clear signs of torture.³² This finding was also reflected in the State Department’s Mexico Country Report on Human Rights Practices for 2011, which states that in multiple cases “the CNDH verified the falsification of medical certificates to cover up torture.”³³

²⁸ Ibid.

²⁹For example, art. 298 of Chihuahua’s state code of criminal procedure, in a provision that undermines the June 2008 constitutional amendments and is termed a “counter” reform by Mexican specialists, allows pre-trial confessions to be admitted as prosecution evidence if they are video-taped, ignoring that in an environment of incommunicado detention and torture, the victim will have no choice but to say whatever the torturers demand into a video camera. State Code of Criminal Procedure of Chihuahua, 2006, Art 298.

³⁰ Human Rights Watch, *Neither Rights Nor Security*, p. 28.

³¹ Committee Against Torture, “Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment,” General Comment No 2, Implementation of article 2 by States Parties, CAT/C/GC/2/CRP. 1/Rev.4, http://www1.umn.edu/humanrts/cat/general_comments/cat-gencom2.html (accessed September 15, 2011).

³² UN 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, (Visit took place from August 27 to September 12, 2008) CAT/OP/MEX/1, May 31, 2010. These findings were affirmed by the State Department in its 2011 country human rights report on Mexico. United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: “Mexico,” May 24, 2012.

³³ United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: “Mexico,” May 24, 2012, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186528#wrapper

For example, according to a recommendation issued by the CNDH in 2011, two civilians in Hidalgo del Parral, Chihuahua, were tortured by army personnel in August 2009 on a military base. However, despite clear evidence that the victims had suffered physical abuse, an exam of one of the victims carried out by military medical experts found that he was healthy and showed no signs of abuse. In addition, despite the fact that one of the victims made a formal complaint stating that he had suffered torture, the military prosecutor's office never opened an investigation into the complaint, which, according to the CNDH, constituted a violation of the victim's right to justice.³⁴

In its 2011 report, Human Rights Watch further documented that many medical examiners regularly must conduct their exams in the presence of law enforcement officers, sometimes the same officers responsible for having inflicted injuries against detainees. In cases where medical examiners did document serious injuries, they failed to offer any conclusions as to what may have caused the injuries or request that more comprehensive exams be conducted in possible instances of torture.³⁵

Thus, confessions obtained through torture continue to be admitted as evidence by judges, who inappropriately place the burden of proof on the victim denouncing torture to prove his or her version of events.

Impunity Prevails in Cases of Torture

Few public prosecutors, investigative police, soldiers and other state agents are ever prosecuted for torture. According to information provided by Mexico's Federal Attorney General's Office (*Procuraduría General de la República*, PGR), only two people were convicted for torture at the federal level³⁶ between January 1994 and June 2010. The PGR also reported that between December 1, 2006 and June 30, 2010 it opened 41 investigations for torture but only one person was formally charged for committing this human rights violation, although this does not mean that the person was then convicted of the crime.³⁷ In Mexico City, none of the 75 torture investigations opened by the state prosecutor's office from 2007 to 2011 resulted in charges being presented against any of the alleged perpetrators.³⁸

Continuing admission of tortured confessions in new, adversarial criminal justice system

Especially alarming is the continuing admission of confessions coerced through torture in the "new" adversarial criminal justice system, such as in the case of Marcelo LaGuarda, who was arbitrarily detained, threatened, and beaten by judicial police in Monterrey, Nuevo León in April 2010, on the grounds that he was responsible for killing a fellow student. He was detained again in September 2010 and subjected to a range of torture tactics by police, including electric shocks, waterboarding, sleep deprivation, and asphyxiation, in order to coerce him to confess to the crime. He said state prosecutors and a public defender were present when he was forced to sign a false statement. Despite clear physical injuries

³⁴ Human Rights Watch, *Neither Rights Nor Security*, p. 43.

³⁵ Procuraduría General de la República, Doc. No. SJAI/DGAJ/05383/2010, Folio 0001700097810, Sept. 8, 2010, p. 2.

³⁶ Procuraduría General de la República, Doc. No. SJAI/DGAJ/04795/2010, Folio 0001700097610, August 13, 2010, p. 2.

³⁷ See Procuraduría General de Justicia del Distrito Federal, "Informe Estadístico", Nov. 2011, http://www.pgjdf.gob.mx/images/difusion/fuentes/InformeAveriguacionesPreviasPorTortura.pdf?idw3_contenidos=0

³⁸ Human Rights Watch, *Neither Rights Nor Security*, p. 91-96.

sustained during his detention, state medical officials repeatedly failed to document LaGuarda's injuries. Later, when he was on remand, his family contracted a certified independent medical examiner to conduct a medical exam, who recorded serious injuries which would have been sustained by torture of the kind the victim had described. He repeatedly told state prosecutors, judges, and the Nuevo León State Human Rights Commission that he was subjected to torture, yet he was not given an examination in accordance with the Istanbul Protocol (as is required of state authorities), nor was his initial confession struck from the record.

Relying primarily on his confession, a judge sentenced LaGuarda to 42 years in prison in September 2011. To disqualify LaGuarda's claims that his first confession—which he later retracted—was false and had been obtained through torture, the judge cited the so-called "principle of procedural immediacy" (*principio de inmediatez procesal*), which argues that initial confessions are the most reliable because they are closer to the actual crime. This principle should have been rendered obsolete by Mexico's 2008 constitutional reform. His family is currently appealing his case.

The State Department has recognized the continuing use of torture to obtain confessions used at trial in other cases, such as that of Israel Arzate Meléndez in Ciudad Juárez, Chihuahua, discussed in the 2011 Country Report on Human Rights. Arzate was detained by Mexican soldiers on February 3, 2010, and taken to the military barracks where he was beaten, shocked, and asphyxiated repeatedly (the Istanbul Protocol later applied to Israel by the CNDH revealed widespread electrical burns on his body). Through two days of torture, he was forced to confess to having supposedly participated in the homicides of 15 people. When he informed the judge during his arraignment that he had been tortured into giving a false confession, she refused to view the visible marks on his body and failed to open an investigation. She ordered that his trial proceed, relying on the coerced confession and ignoring the testimonies of multiple defense witnesses. When Arzate filed an *amparo* seeking to invalidate the confession, a federal judge refused to admit as evidence the Istanbul Protocol that proves that Israel was tortured. On August 31, 2011, the CNDH issued Recommendation 49/2011, in which it confirms that the victim was tortured.³⁹

The undersigned organizations emphasize that unless and until the Mexican government provides a list of multiple, concrete cases demonstrating a tendency to exclude testimony from trial where it has been documented that torture was used to obtain the testimony, it is impossible to affirm that Mexico is enforcing the prohibition on admitting such evidence in criminal trials.

We recognize the serious challenges to public security in Mexico, and the United States' shared responsibility in addressing this crisis. However, an effective US-Mexico partnership requires, among other things, an objective analysis of the strengths and weaknesses of the Mexican government's efforts. A determination that Mexico is complying with the human rights requirements in the Merida Initiative—in the face of clear evidence to the contrary—will not only undermine the credibility of U.S. foreign policy

³⁹Through Recommendation 49/2011, the CNDH accredited torture, retention in a military facility and the illegal act of taking Israel back out of prison for further torture when he had already been placed in the custody of the judicial branch: "[T]his National Human Rights Commission finds sufficient evidence to show that [Israel Arzate] was the victim of torture, [...] he was forced to confess alleged participation in the massacre that happened in the neighborhood of Villas de Salvárcar [...]." Importantly, the CNDH notes, "[T]he absence of a serious, scientific investigation and the use of torture instead, may well lead to lack of punishment of guilty parties, which can lead to the revictimization of the victims and impunity, a violation of due process in the administration of justice." Available at CNDH, www.cndh.org.mx. Detailed case information is available from the Miguel Agustín Pro Juárez Human Rights Center, internacional@centroprodh.org.mx

commitments and the effectiveness of human rights safeguards in U.S. foreign assistance, but will also undermine efforts to address the serious problem of abusive security forces and near-total impunity in Mexico. Given the imminent political transition this year to a new presidential administration, there is no more important time to send a clear message that the U.S. takes compliance with these human rights commitments seriously.

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