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Washington, D.C. 20520

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Dear Mr. Chairman:

On behalf of the Secretary of State, we are pleased to transmit the enclosed report on actions taken by the Government of Mexico since June 30, 2008, to investigate, prosecute, and punish violations of internationally recognized human rights by members of the Mexican Federal Police and military forces. This report has been prepared in response to the Joint Explanatory Statement of the Committee of Conference (Conf. Rpt. 111- 151) accompanying the Supplemental Appropriations Act, 2009 (P. L. 111-32).

We hope this information will be helpful. Please let us know if we can be of further assistance.

Sincerely,

Richard R. Verma

Richard R. Verma
Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

The Honorable

Patrick J. Leahy, Chairman,
Subcommittee on State, Foreign Operations,
and Related Programs,
Committee on Appropriations,
United States Senate.

MEXICO – REPORT ON ACTIONS TAKEN TO INVESTIGATE, PROSECUTE, AND PUNISH VIOLATIONS OF HUMAN RIGHTS

This document responds to the directive contained in the Joint Explanatory Statement of the Committee of Conference (Conf. Rpt. 111- 151) accompanying the Supplemental Appropriations Act, 2009 (P. L. 111-32), which calls for a report by the Secretary of State on actions taken by the Government of Mexico since June 30, 2008, to investigate, prosecute, and punish violations of internationally recognized human rights by members of the Mexican federal police and military forces members. A separate report will be submitted addressing actions taken by the Mexican government with respect to the investigation of the murder of Bradley Roland Will.

SECTION 1: Investigations of Human Rights Violations

Under law, Mexico affords three avenues for the investigation of alleged human-rights violations by its security forces: directly with the Secretariat of Public Security (SSP) or the Mexican military (SEDENA); with the Public Ministry (MP) of the Attorney General's Office (PGR); or by filing a complaint with Mexico's National Human Rights Commission (CNDH), an autonomous, government-funded agency that can call on government authorities to impose administrative sanctions or pursue criminal charges against officials, but cannot impose legal sanctions itself. Absent a complaint, each of these four institutions can initiate investigations on its own.

Both SSP and SEDENA have created human-rights offices charged with promoting greater respect for human rights and investigating specific human-rights complaints.

SSP: In 2009, the Mexican Congress approved police reform legislation that gave SSP the authority to investigate complaints against its employees. Upon receipt of a human-rights complaint, SSP's Human Rights Office (HRO) conducts an investigation into whether any human-rights violations have occurred. In addition, SSP reserves the right to open its own investigations into alleged abuses. If it determines a violation was committed, the HRO passes the case for further action to an Internal Affairs Unit (IAU) that reports to the Secretariat of Public Administration (SFP). The IAU has the authority to impose administrative sanctions, ranging from reprimands to suspension to permanent separation from duties, and to transfer the case to the PGR for possible prosecution. In 2009, SSP

registered 939 complaints, 87 directly and 722 through CNDH, of human-rights violations in categories ranging from, *inter alia*, illegal detention (375) and illegal searches (142) to presumed disappearances (130) and torture (23). Of the 939 complaints, all were investigated by CNDH, SSP's Human Rights Unit and the Internal Affairs Unit of the Federal Police. Two hundred forty-two (242) of these investigations have been concluded, and those remaining are being investigated by CNDH or SSP. In the vast majority of the closed investigations, CNDH and SSP found that the complaints were not related to human rights.

SEDENA: SEDENA has an HRO charged with promoting human rights and liaising with CNDH on cases it is investigating. SEDENA also has its own Office of the Military Procurator where civilians may file complaints against SEDENA officials for violations, although this rarely occurs. SEDENA informed the U.S. Embassy in Mexico City that the Military Procurator investigated a total of five complaints for human-rights violations in 2008 and 2009. We are working to clarify how these cases relate to other SEDENA cases discussed below (page seven) and to clarify the status and/or results of these investigations. If the Military Procurator determines that violations have occurred, a prosecution will ensue under the Mexican Military Code. As indicated in Section 2 below, information on military prosecutions is difficult to obtain. The limited information on military prosecutions and complaints filed suggests that actual prosecutions are rare.

Secondly, Mexican citizens have the option of filing complaints against SSP or SEDENA directly with the PGR. The PGR investigated and convicted SSP personnel for three cases of physical abuse in 2008 and for one case of murder in 2009. Once a citizen files a complaint with the PGR's offices that investigate and prosecute crimes committed by public servants, the PGR has the authority to launch an investigation that will involve contacting SSP or SEDENA for information. Section 2 addresses the issue of jurisdiction in cases involving military officials. Legal scholars agree in most instances that PGR has the authority to receive and investigate violations against civilians regardless of whether they have been committed by military officials. However, the military systematically claims jurisdiction over these cases (with the exception of a case dating back to 2006 that involved off-duty soldiers) and civilian courts readily transfer them to the Office of the Military Procurator.

The third avenue for the investigation of alleged human-rights violations is through the CNDH. The CNDH is structured like the office of an ombudsman. It does not replace the courts, but instead functions as an independent body responsible for overseeing federal government authorities. It investigates allegations of human-

rights violations by the federal government, reports publicly on its investigations, and promotes human-rights education among the public. The CNDH represents the only autonomous entity with the authority to investigate allegations of human-rights violations at the federal level.

Each year, CNDH receives thousands of complaints pertaining to authorities across the full spectrum of the Mexican government. Mexican citizens may file complaints simultaneously with both CNDH and through Mexico's legal system described earlier. Given a lingering mistrust in the commitment of Mexico's institutions to investigate complaints, most complainants prefer to register their complaints with CNDH. In a similar vein, Mexico's legal institutions often demonstrate a greater readiness to respond to complaints filed with CNDH.

Once CNDH officials determine that a complaint falls within the organization's jurisdiction – and not the jurisdiction of one of the 32 state (including the Federal District) human-rights commissions that operate with a similar mandate on the local level – they open an investigation. Complaints that involve more ongoing, egregious violations – e.g., the illegal detention and torture of individuals – will prompt CNDH to launch an investigation urging that the accused institution immediately respond to the complaint.

Each complaint has the potential to generate a finding that one or more violations were committed. For example, one complaint could produce a finding that one individual suffered several violations in the form of an illegal search, illegal detention, and mistreatment. In this instance, CNDH would register one complaint but three violations.

CNDH is generally disposed to resolve complaints of violations in an amicable manner between the complainant and the institution accused of the violation. Many cases are registered as resolved simply on the basis of a determination that the complaint should have been taken up with another institution. In the case of egregious violations or cases that CNDH is unable to resolve amicably, however, CNDH reserves the right to issue "recommendations" to the appropriate federal authority for further investigation or prosecution of transgressors. These recommendations generally fall into the following three categories: (1) a call for further investigation by the offending institution of the complaint filed; (2) a call for an administrative action against the superiors of the offending officials for failing to honor their obligations under Mexican law; or (3) a determination that either the PGR or SEDENA's Military Procurator should criminally charge the offending officials. The recommendations, however, are not legally binding, nor can the CNDH initiate legal proceedings against suspected human-rights violators.

Hence the recommendations have moral force but are not compulsory. Federal government officials are, nevertheless, required to respond to CNDH requests for information under the law.

Whenever a recommendation is accepted by the relevant authority, CNDH is required to follow-up with the authority to ensure that it is, in fact, carrying out the recommendation. CNDH sends a request to the authority asking for evidence of its compliance. The CNDH then reports this follow-up information in its annual report. Whenever an authority fails to accept a recommendation, CNDH reserves the right to condemn publicly the authority to draw attention to its lack of respect for human rights. Other NGOs and international organizations often draw attention to the failure of Mexican institutions to comply with CNDH recommendations or even accept them. NGOs generally praise CNDH for its investigations into alleged human-rights violations but often criticize its inability to bring sufficient pressure to bear upon the government to comply with recommendations. In April 2010, the Senate passed an amendment to the constitution that would grant CNDH greater power to enforce its recommendations and provide it with increased access to information on military and civilian investigations. The amendment is currently before Congress' Lower House for discussion.

CNDH's Investigations

In relation to SSP, CNDH received 2,361 complaints in 2009, which upon investigation generated a total of 667 violations in categories that included arbitrary detention (244), torture (1), non-compliance with arrest warrant procedures (177), and cruel and inhuman treatment (245). Well over half of the complaints processed in 2009 were resolved by determining that the complaint was not related to human rights and redirecting the complainant to the proper authority (1,722), suspending an investigation for lack of evidence (222), and cases that became moot during the course of the investigation, meaning that the claimant received compensation or restitution from the implicated agency before CNDH completed the investigation (110). Three complaints involving violations pertaining to treatment in prison and arbitrary detention resulted in recommendations calling on the SSP to make amends with victims and adopt procedural measures to comply with its obligations. Responding to an inquiry from the embassy regarding discrepancies between CNDH and SSP numbers, CNDH explained that statistics rarely track among different organizations due to the lack of standard criteria for classifying human rights complaints and violations.

SEDENA was cited in 1,971 complaints received by CNDH in 2009, which upon investigation generated a total of 2,498 violations in categories that included arbitrary detention (916), torture (40), non-compliance with arrest warrant procedures (806), and cruel and inhuman treatment (736). Over half of these complaints (1,160) were resolved by the CNDH directing the complaint to the proper authority (for example, to a state-level human-rights office), suspending an investigation for lack of evidence (387), or by the complainant withdrawing his/her complaint (179). Thirty of these 1,971 complaints – many dating back to events that took place in 2008 or even prior and involving mostly allegations of cruel and inhumane treatment -- resulted in recommendations that SEDENA take measures to address the physical or psychological needs of the victims and conduct investigations to determine the responsible individuals. In 2008 CNDH issued 14 recommendations to SEDENA, calling on that institution to take action and follow-up on the cases. In connection with the 2008 recommendations, as of March 1, 2010 SEDENA had fully completed one recommendation and partially completed 13. For 2009, SEDENA partially accepted 25 of its 30 recommendations and fully accepted four with one still pending. At year's end, it had partially completed 14 of the recommendations issued to it by CNDH.

Additional Calls for Investigations

The human-rights NGO community, both domestic and international, is exceptionally active and vocal on human-rights issues in Mexico, including allegations of impunity by security forces. In April 2009, Human Rights Watch produced a report that documented 17 cases of egregious human-rights violations with one case dating back to Mexico's "dirty war" in the 1970s, four dating back to the 1990s, and the remaining 12 occurring between 2000 and 2008. In August 2009, a group of four human-rights NGOs wrote a letter to the Secretary of Governance, Fernando Gomez Mont, asking for a report on the status of seven cases of alleged human-rights violations over the last two years that implicated members of the military. In December 2009, affirming the Mexican government's commitment to work closely with civil society, Secretary Gomez Mont responded in a letter noting the involvement of CNDH, state human-rights commissions, PGR, the local attorney generals' offices, and SEDENA's Office of the Military Procurator in each of the cases. According to the letter, SEDENA was in the process of actively investigating all seven cases. In one case, Secretary Gomez Mont affirmed SEDENA had detained one soldier and provided compensation to the family of an individual who had allegedly been killed by the soldier.

Separately, the United States tracks developments in serious human-rights cases described in Mexican government, NGO, and CNDH reports. U.S. officials have

frequently stressed to Mexican government authorities at the highest levels the importance attached to the respect for human rights and to progress on specific human-rights cases and have sought information on the status of such cases. In July 2009, the Government of Mexico shared information on seven cases of alleged human-rights violations involving SEDENA officials, one of which dated to 1999, one to 2002, and the remaining five cases to 2007-2008. According to the Mexican government communication, SEDENA's Office of the Military Procurator had investigated and cleared officials in the two older cases. With regard to the five more recent cases, SEDENA's investigation was still underway but in four of the five cases – of which three involved homicide and one involved rape – SEDENA indemnified the victims' families.

SECTION 2: Prosecution and Punishment of Human Rights Violations

Justice System Under Reform

Mexico's legal system is a hybrid system. While it incorporates some aspects of common law and the accusatorial system, it draws primarily from the traditional European code-based, civil law inquisitorial systems. The 2008 constitutional criminal justice reforms mandate implementation of an oral adversarial system and the presumption of innocence by 2016. To date, eight states have passed legislation and are at various stages of training and implementation for this transition, three states are currently legislating reforms, and seven states have reached out for Mexican government or U.S. government assistance to incorporate the reforms. The old justice system, still in effect at the federal level as well as in the federal district (Mexico City) and 22 states, does not promote transparency. A typical trial consists of a series of fact-gathering hearings during which the court receives documentary evidence or testimony. A judge in chambers reviews the case file and then issues a final, written ruling. The record of the proceeding is not available to the general public; only the parties involved have access to the official file, but only by a special motion.

On June 11, 2009, Mexico's human-rights record came up for consideration in the context of the UN Human Rights Council's Universal Periodic Review (UPR). In speaking to its record in dealing with alleged human-rights violations committed by SEDENA officials, Mexico announced that six cases were in the military justice system's preliminary investigation phase, three cases involving 32 military personnel had been brought before military authorities, and nine cases involving 14 convictions against 14 military personnel had been registered. Human Rights Watch, upon reviewing the nine cases involving 14 convictions flagged at the

UPR, determined that only three of the convictions involved incidents that had taken place during the Calderon administration. Of those latter three, it found that one of the convictions had been overturned on appeal, another did not involve an apparent human rights violation but rather a car accident, and that the third resulted in a soldier being sentenced to nine months in prison for killing a civilian who had failed to stop at a checkpoint.

It appears that SEDENA is attempting to reconcile its numbers to reflect cases that have occurred during the Calderon administration. On July 23, 2009, SEDENA announced it had sentenced 12 soldiers for human-rights violations since President Calderon took office in December 2006, and that an additional 53 soldiers were under investigation for alleged violations. In a June 2010 press release, SEDENA presented new information slightly different than what it released in 2009. It said four officials are under preliminary investigation for human-rights violations, 39 are currently subject to a legal process in military courts, and seven have been sentenced. Six of the convicted soldiers participated in the July 11, 2006 incident in Castanos, Coahuila, during which soldiers raped nine women at a nightclub and beat six police officers. In 2007, the military investigated breaches of military duties with respect to the Castanos incident, sentencing them to 1.5 to 2 years. Meanwhile, civilian courts investigated the soldiers on charges of rape and beating and ultimately sentenced three of the soldiers to lengthy sentences of up to 41 years; all three were discharged from the military and are currently serving their sentences in civilian prisons. The seventh case is related to the sentencing of a colonel for a military hazing incident that resulted in the death of a subordinate.

IACHR Decision to Prompt Changes in the Jurisdiction of Military Courts

The role of the military tribunal in the adjudication of cases implicating military members in human-rights violations of civilians is an important issue in the administration of justice in Mexico. Article 13 of the Mexican Constitution states that military jurisdiction applies to “crimes against military discipline” but that military tribunals have no jurisdiction over people who do not belong to the army. However, Article 57 of the Military Code of Justice defines crimes against military discipline as “state or common offenses that have been committed by active duty military.” In practice, civilian courts have generally ceded jurisdiction to the military in cases where military personnel stand accused of human-rights violations committed against civilians. The Supreme Court has not rendered decisions refuting the military’s claim to jurisdiction to all cases involving on-duty military personnel.

In a decision rendered November 23, 2009, in a case implicating military personnel in a forced disappearance dating back to 1974, the Inter-American Court for Human Rights ruled in favor of the victim's family. The court described Article 57 as "broad and imprecise" and while noting active duty military personnel may be implicated in crimes, determined that "this is not [a sufficient standard] to apply military jurisdiction." The ruling further described Article 57 as "incompatible with the American Convention on Human Rights" and concluded that the country "should adopt, within a reasonable time period, the pertinent legislative reforms to make Article 57 compatible with international standards and the American Convention."

SECTION 3: U.S. Engagement on Human Rights

The United States has engaged on multiple fronts with both the Mexican government and the human-rights NGO community to promote greater transparency on human rights.

Bilateral Human Rights Dialogue: The United States and Mexico have agreed to address human-rights issues in the context of a Bilateral Human Rights Dialogue (BHRD). The Mexican delegation to the BHRD includes senior representatives of the Foreign Relations Secretariat (SRE), the Secretariat of the Interior (SEGOB), PGR, SSP, SEDENA, and the Navy (SEMAR), while the U.S. side is led by the U.S. Ambassador to Mexico with representation from the country team and senior U.S. government officials, including the Assistant Secretary of the Bureau of Democracy, Human Rights and Labor. The BHRD, which met formally for the first time on February 3, 2010, seeks to promote a better understanding of the human-rights situation to foster stronger institutional mechanisms for managing these issues and to provide information on alleged violations. The dialogue will help reinforce the promotion and protection of universal human rights and fundamental freedoms that are supported by our respective governments, including greater transparency and accountability in relation to the investigation of alleged human-rights violations.

Police Training Support: Under the Merida Initiative, federal police training programs have incorporated modules on respect for human rights. Through January 2010, about 4,500 federal police officers had received training.

Military Human Rights Training: The United States is working cooperatively with both SEDENA and SEMAR to expand human-rights training opportunities to active duty personnel. We have worked with SEMAR to enable it to send officers

to the Western Hemisphere Institute for Security Cooperation. Separately, both SEDENA and SEMAR have participated in subject matter exchanges with the U.S. military focusing on human rights.

Provisional Military Legal Exchanges: We also envision activities to enhance the capacity and openness of the military justice system, including assistance to promote the transition of the military justice system to an oral, accusatorial system, as required by law, in parallel with the transformation underway on the civilian side.

Human Rights NGO Dialogue: We have established a working dialogue with the international and local NGO community which focuses on investigation and prosecution of alleged violations; transparency and accountability mechanisms; improvement of the dialogue between the Mexican government and NGOs and safety assurances for victims and advocates; and benchmarks for tracking progress.

Assistance to the UNOHR: USAID has developed an agreement with the United Nations Office of the High Commissioner for Human Rights in Mexico (UNOHR) to provide it with \$1 million to support its human rights outreach with the Mexican government, particularly in the area of human-rights monitoring.

Attachment:

Text of Reporting Directive

ANNEX: Text of Reporting Directive

The Joint Explanatory Statement of the Committee of Conference (Conf. Rpt. 111-151) that accompanies the Supplemental Appropriations Act, 2009 (P. L. 111-32) states at p. 132:

“The conferees direct the Secretary of State to submit a report to the Committees on Appropriations not later than 45 days after enactment of this Act detailing actions taken by the Government of Mexico since June 30, 2008, to investigate, prosecute, and punish violations of internationally recognized human rights by members of the Mexican Federal police and military forces, and to support a thorough, independent, and credible investigation of the murder of American citizen Bradley Roland Will.”