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SENT BY FAX AND EMAIL

London, 20 November 2010

Dear Attorney General,

I write on behalf of the Bar Human Rights Committee (“BHRC”) regarding the decision of the Inter-American Court of Human Rights (“Inter-American Court,” or “the Court”) in *Radilla Pacheco v. Mexico*. As the one-year anniversary of this decision nears, the BHRC encourages the Mexican government to uphold the Court’s recommendations, including amending Article 57 of the Code of Military Justice as to give civilian courts jurisdiction over human rights abuses committed by members of the military against civilians, and amend its laws accordingly.

The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to fair trial. In 2009, a delegation of international lawyers led by the BHRC travelled to Mexico to investigate respect for the rule of law and the ability of lawyers and human rights defenders to exercise their vocation freely. The BHRC subsequently wrote to the Mexican authorities regarding the safety and security of Alba Gabriela Cruz Ramos and Raúl Hernández, and submitted an amicus brief to the Inter-American Court in the case of *Valentina Rosendo Cantú et al v. Mexico*.<sup>1</sup> As such, the BHRC is in a unique position to comment on Mexico’s progress in adhering to the Inter-American Court’s recommendations in the Radilla Pacheco case.

As you will be aware, the 23 November 2010 marks the one-year anniversary since the Inter-American Court decision in *Radilla Pacheco v. Mexico*,<sup>2</sup> in which it was held that the Mexican state was responsible for the forced disappearance of Rosendo Radilla Pacheco. While noting that the Mexican government has taken modest steps toward limiting military jurisdiction over certain forms of human rights violations, the BHRC emphasises that Mexico must strictly adhere to the Court’s decision. In its decision, the Court ordered *inter alia* that the state was obligated to: carry out investigations into the fate and whereabouts of Rosendo Radilla Pacheco under civilian jurisdiction; to bring Article 57 of the Code of Military Justice in line with recognised international standards; and to withdraw Mexico’s interpretative declaration

<sup>1</sup> Amicus brief submitted and letters available online at: <http://www.barhumanrights.org.uk/>.

<sup>2</sup> *Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Case 777/01, Report No. 65/05, Inter-Am. C.H.R., OEA/Ser.L/V/II.124 Doc. 5 (2005) available online at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_209\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_ing.pdf) (last accessed 19 November 2010).

to the Inter-American Convention on Forced Disappearances, as well as its reservation to Article IX of the convention.<sup>3</sup>

The BHRC notes with serious concern that, a year after the judgement, the Court's decision has not been fully implemented. Investigations into the whereabouts of Rosendo Radilla Pacheco have not made any progress. As part of the recognition of the State's responsibility for Radilla Pacheco's disappearance, proper investigation as to his whereabouts is a critical aspect of the State's obligations to the Radilla family. Failure to undertake such an investigation is also a demonstrative factor as to the seriousness in which the State is implementing the Court's ruling.

With regard to the reform of the Code of Military Justice, the BHRC notes that a pertinent bill was introduced by President Felipe Calderón on 18 October 2010 and is currently being considered by the Senate and House of Deputies. The bill, which proposes that enforced disappearance, torture and rape be subject to civilian court jurisdiction, is a positive step to reform the military justice system in line with the Inter-American Court's decision but does not adequately modify military jurisdiction. The proposed bill as it is currently written fails to adequately address the issues of impunity currently enjoyed by military personnel who commit human rights violations against the civilian population and referenced in the Court's decision.

Torture, rape, and forced disappearances are three extremely serious human rights violations, and the BHRC commends the government's move to give civil courts jurisdiction over cases involving members of the military who commit such crimes against the civilian population. However, the proposal is far too narrow in its scope being limited to only these three crimes. Extrajudicial killings, arbitrary detention, cruel and degrading treatment and sexual abuse, which make up the majority of complaints, will continue to be investigated through the structures of the military justice system. Additionally, even for the crimes addressed, the bill would allow civilian jurisdiction over only those who are directly involved in the commission of such crimes. Military jurisdiction will be retained for allegations of acquiescence, undermining investigations or attempts to prevent the course of justice in relation to these crimes.

In addition to its narrow scope, the proposed reform also fails to address the structure of the military justice system, which has been criticised for its lack of independence and impartiality. The system often fails to provide an effective remedy to victims, resulting in impunity for members who commit abuses. As noted by the Secretary of Defense (SEDENA), only one soldier has been found guilty by a military tribunal since 2007, and an ever-increasing number of victims have sought justice before the Inter-American Court for crimes committed against them by the Mexican military.

The bill would also grant the military police (*la Policía Ministerial Militar*) the discretion to decide whether incidents constitute enforced disappearance, rape, or torture, thereby falling outside military jurisdiction. This retains the structures which have long been criticised for lacking independence and transparency and does not adequately address the concerns expressed in the Inter-American Court's decision. The record of the military in downgrading charges against soldiers suggests that this may be a further incentive the military police to bring lesser charges against alleged perpetrators so as to retain the military jurisdiction over the case.

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<sup>3</sup> *Ibid.* paras. 7-18.

The BHRC respectfully draws the attention of the Mexican authorities to paragraph 274 of the Inter-American Court's decision which states that "[r]egarding situations that violate human rights of civilians, military jurisdiction cannot operate under any circumstance." Under Article 1 of the American Convention on Human Rights, signatory States are under an obligation to ensure to all persons subject to their jurisdiction the free and full exercise of the rights present in the Convention. In order to comply with this obligation, all matters addressed in the Inter-American Court's decision must be addressed. This is crucial to the prevention of impunity, ensuring accountability and justice for the victims of violations of their human rights and restoring faith in the system of justice in Mexico.

In light of the above-mentioned concerns, the BHRC calls on the Mexican Government to:

- ensure the prompt, thorough and impartial investigation into the disappearance of Rosendo Radilla Pacheco in consultation with the Radilla family and that those responsible are brought to account within the appropriate civilian jurisdiction;
- ensure that the legislative reforms to the Code of Military Justice are meaningful and take into account the full scope of the Inter-American Court's decision by subjecting all violations of human rights against civilians to civilian jurisdiction only;
- ensure full compliance with all its obligations stipulated in the decision of the Court, including those aspects relating to the Inter-American Convention on Forced Disappearances, carrying out acts of public recognition of the State's responsibility and making reparations to Radilla family.

Yours sincerely,



**Mark Muller QC**  
Chairman  
Bar Human Rights Committee of England and Wales

Copies sent to:

- Señor Presidente Felipe de Jesús Calderón Hinojosa
- Lic. Arturo Chávez Chávez, Procuraduría General de la República
- Dr. José Antonio Guevara Bermúdez, Unidad para la Promoción y Defensa de los Derechos Humanos
- Ambassador Eduardo Medina Mora Icaza, Mexican Ambassador to the UK
- Ambassador Judith Macgregor, UK Ambassador to Mexico