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President of the United States of México  
Felipe Calderón Hinojosa  
Palacio Nacional  
Edificio 10, Planta baja  
Col. Centro, Deleg. Cuauhtémoc  
C.P. 06067, México  
Distrito Federal

26 October 2010

Dear President Calderón,

**Re: Concern at non-implementation of the Inter-American Court of Human Rights judgment in the *Rosendo Radilla Pacheco* case.**

We are writing to you on behalf of the International Bar Association Human Rights Institute (IBAHRI) to express concern at the non-implementation by the United States of Mexico of the Inter-American Court of Human Rights judgment in the Case of *Radilla-Pacheco v. Mexico*<sup>1</sup>.

With 35,000 individual lawyers and over 197 Bar Associations and Law Societies, the IBA influences the development of international law reform and shapes the future of the legal profession. Its member organisations cover all continents. The IBAHRI works across the association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

The IBAHRI has maintained a strong interest in the rule of law and the independence of the judiciary in Latin America. For example, the IBAHRI has recently conducted fact-finding missions to evaluate the state of the rule of law and human rights in Bolivia, Colombia and Brazil. In February 2006, the IBAHRI held a series of training workshops in México on combating torture for judges, lawyers and prosecutors in conjunction with the bar associations of Zacatecas and Aguascalientes. In July 2009, we wrote to your Excellency to express concern at the non-implementation of precautionary measures issued by the Inter-American Commission on Human Rights in the case of Alba Gabriela Cruz Ramos and seven other attorneys of the non-governmental organization, Comité de Liberación 25 de Noviembre. We did not receive any response to this letter.

On 23rd November 2009, the Inter-American Court found the Mexican state responsible for the forced disappearance of Rosendo Radilla Pacheco in 1974, and in its judgment set out the following series of obligations *inter alia* for the state to comply with: to carry out investigations into the fate and whereabouts of Rosendo Radilla under civilian jurisdiction; to carry out legislative reforms so that civilian tribunals are used in all cases where civilians are victims of human rights violations

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<sup>1</sup> I/A Court H.R., **Case of Radilla-Pacheco v. Mexico**. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209.

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(instead of military tribunals); and to provide reparations to the Radilla family and members of AFADEM (Asociación de Familiares de Detenidos, Desaparecidos y Víctimas de Violaciones de los Derechos Humanos en México)<sup>2</sup>.

We are concerned that, almost a year after the judgment, the state has not yet fulfilled these obligations. Firstly, thorough investigations, in consultation with the Radilla family of the victim, have yet to be initiated. These are crucial for the Radilla family, and a key aspect of the obligations of the Mexican authorities. Secondly, whilst we welcome the revisions of the Military Justice Code recently presented by the Government to the Mexican Congress which ensure that cases of enforced disappearance, rape and torture are subject to investigation and prosecution by civilian authorities, we note with concern that under the current legislative proposal extrajudicial executions and cruel and inhuman treatment would continue to be investigated by the military justice system. . Lastly, reparations have not been provided.

We respectfully remind the Mexican State that, according to Article 1 of the Inter-American Convention of Human Rights, the Mexican State has the obligation to ensure to all persons subject to their jurisdiction the free and full exercise of the rights presents in the Convention. This obligation corresponds to a well-established principle of international law, that states must comply with their international treaty obligations in good faith, ‘pacta sunt servanda’, and that they may not invoke the provisions of internal law as justification for its failure to perform a treaty obligation

The IACtHR has also stated on several occasions, that:

‘States Parties to the Convention must ensure compliance with its provisions and their inherent effects (effet utile) within their respective domestic legal systems... These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties’.

We consider it critical that full compliance with decisions of the Inter-American Court of Human Rights is essential for the Mexican State to ensure the free and full enjoyment of the fundamental rights to which its citizens are entitled under the Inter-American system. The fulfilment of these obligations is crucial to prevent impunity in Mexico and to ensure accountability and the delivery of truth and justice for the families of victims of crimes committed by the State.

We therefore respectfully urge you to ensure the following steps are taken in order to comply with the terms of the judgment, that:

- (i) the Office of the Attorney General of the Republic immediately carries out a prompt, full and impartial investigation into the fate and whereabouts of Rosendo Radilla Pacheco and that those responsible stand trial in a civilian tribunal;

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<sup>2</sup> These obligations are specified in operative paragraphs 7,8,9,10, 11, 12, 13, 14, 15, 16, 17 and 18 of the judgment.

- (ii) the Ministry of Interior prioritizes the submission of a legislative proposal to reform Art. 57 of the Military Justice Code to restrict the use of military jurisdiction over cases of extra-judicial executions and cruel and inhuman treatment, and to make the Federal Penal Code compatible with the Inter-American Convention on the Forced Disappearance of Persons<sup>3</sup>; and
- (iii) the Ministry of Interior coordinates the moral and financial reparations owed to the Radilla family and members of AFADEM in order to fully comply with the judgment, including carrying out a public act of recognition of the State's responsibility in this and other cases of human rights violations during the dirty war, as well as finance a book about Rosendo Radilla's life, restoring his memory<sup>4</sup>.

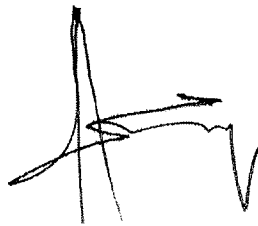
We are concerned that the considerable delay in the implementation of the ruling undermines the rights of the petitioners as well as the protection and guarantee of fundamental rights in Mexico. We are also concerned that non-implementation risks undermining the Inter-American system for the protection of human rights as a whole.

The IBAHRI would be grateful to receive your assurances that our concerns will be addressed as a matter of urgency.

Yours sincerely,



Martin Šolc  
IBAHRI Co-Chair



Sternford Moyo  
IBAHRI Vice Co-Chair

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<sup>3</sup> Inter-American Convention on Forced Disappearance of Persons. Adopted at Belem Do Para, Brazil on September 6<sup>th</sup>, 1994. Ratified by Mexico on February 28, 2002.

<sup>4</sup> Supra (2).

cc:

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