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# OBAMA ADMINISTRATION WITHHOLDS FUNDS FOR DRUG WAR IN MEXICO PENDING HUMAN RIGHTS REFORM

*by* CHRISTINA McMAHON

**O**n Sept. 6, 2010, the Obama Administration announced it would withhold \$26 million in funds allocated to combat drug trafficking in Mexico due to reports of widespread human rights violations—including the torture, rape and murder of Mexican civilians—committed by Mexican law enforcement and military.<sup>1</sup> The funds were allocated under the Merida Initiative, a plan announced by the Bush Administration on Oct. 22, 2007 allocat-

ing \$1.4 billion dollars to combat drug trafficking in Mexico from 2008 to 2010.<sup>2</sup>

However, this decision was undermined by the Administration's simultaneous, separate decision to release \$36 million dollars in funds requiring U.S. State Department approval of Mexican human rights protection under Merida. These contrasting decisions—one withholding Merida funds on human rights grounds, the other releasing separate funds on the same grounds—have received mixed reactions from both human rights organizations and the Mexican government as the United States considers expanding drug war funding for Merida over the next few years.

The Merida Initiative states four primary goals: breaking the power and impunity of drug organizations, assisting Mexico in strengthening border controls, improving Mexican justice systems, and curtailing gang activity and drug demand.<sup>3</sup> In 2008, Congress appropriated \$400 million for Mexico under P.L. 110-252.<sup>4</sup> This law divided Merida funds into three groups: International Narcotics Control and Law Enforcement (INCLE), Foreign Military Financing (FMF), and Economic Support Fund (ESF).<sup>5</sup>

P.L. 110-252 imposed human rights conditions requiring 15 percent of INCLE and FMF—which received over 96 percent of total Merida funds from 2008-2010—to be withheld pending Secretary of State reports of Mexican improvement in four human rights areas: (1) transparency and accountability of federal police forces; (2) increased communication between Mexican government authorities and human rights organizations to implement Merida in accordance with Mexican and international law; (3) prosecution of federal police and military committing human rights violations in civilian courts; and (4) prohibition of testimony obtained through torture.<sup>6</sup> The human rights requirements under P.L. 110-252 were continued in later appropriation laws for 2009 and 2010 as well.<sup>7</sup>

Despite the human rights requirements mandated by P.L. 110-252, human rights abuses have increased exponentially since Merida's 2008 implementation.<sup>8</sup> Mexico's Human Rights Commission (CNDH) claims that reports of human rights abuses committed by the Mexican military increased from 182 in 2006 to 1,230 in 2008.<sup>9</sup> Additionally, there were over four thousand human rights complaints since 2007, including claims of torture, rape, and enforced disappearances at the hands of the Mexican military.<sup>10</sup>

Although complaints increased significantly, records indicate that not one member of the Mexican military has been sentenced for human rights violations since Merida's implementation.<sup>11</sup> Human rights organizations blame Mexico's failure to try claims of actions by military members against civilians in civilian courts, as required by P.L. 110-252.<sup>12</sup> A July 29, 2010 State Department report to Congress asserted that Mexico's military justice system "systematically claims jurisdiction over complaints by civilians against members of the military".<sup>13</sup> The report also indicated widespread use of confessions obtained through torture in Mexican courts.<sup>14</sup> Documented torture tactics used by the military to obtain confessions involve electric shocks, beatings, and suffocation.<sup>15</sup> Often, these coerced confessions are the primary evidence against the accused.<sup>16</sup>

Moreover, a March 2010 law passed in Mexico limits the amount of information the Federal Attorney General's Office (PGR) must hand over to CNDH, the independent commission responsible for receiving complaints against federal police.<sup>17</sup> The PGR, one of the main recipients of Merida aid, now must only give CNDH information that it determines "does not put active investigations or individuals' security at risk."<sup>18</sup> According to Mexican human rights lawyer Luis Miguel, "The new law gives the PGR discretion to decide what information it will withhold."<sup>19</sup> This directly counters the transparency requirements of P.L. 110-252.<sup>20</sup>

In criticizing the new law, former CNDH president José Luis Soberanes Fernández stated, "In 2008, of the ten agencies most frequently accused by individuals as alleged human rights violators, the PGR ranks third."<sup>21</sup> Human Rights Watch affirmed the dangers of further limiting transparency of the PGR, stating that "the victims of abuse who take their cases to the CNDH may reasonably view the institution as the only viable guarantor of their rights."<sup>22</sup>

As a result of the above issues with Mexican human rights violations under the Merida Initiative, on Sept. 6, 2010, the U.S. State Department announced its decision to withhold \$26 million in scheduled Merida funding.<sup>23</sup> These funds are to be held until "additional progress can be made" in addressing widespread human rights violations by Mexican law enforcement and judiciaries.<sup>24</sup> This announcement marked the first withholding of funds under the plan on human rights grounds.

In a joint statement issued Sept. 14, 2010, several leading human rights organizations, including Human Rights Watch, Amnesty International, and the Washington Office on Latin America (WOLA) issued a statement supporting the State Department's decision to withhold the funds.<sup>25</sup> However, the statement also criticized the State Department's simultaneous decision to release \$36 million in Merida funds previously appropriated for 2008 and 2009 that remained unapproved.<sup>26</sup> The 2008 funds were set to expire on Sept. 30, 2010.<sup>27</sup> This decision was issued in a Sept. 2, 2010 State Department report to Congress stating that Mexico is meeting Merida's human rights requirements.<sup>28</sup>

WOLA's associate for Mexico and Central America, Maureen Meyer, criticized the inconsistencies of the two reports, claiming that by releasing the \$36 million, the State Department "supports claims that human rights requirements have been met, while simultaneously withholding future funds on the same grounds."<sup>29</sup>

Human rights organizations assert that the contradicting reports undermine public security efforts under Merida in Mexico, believing that releasing the \$36 million will "send the message that the United States condones the grave human rights violations committed in Mexico, including torture, rape, and enforced disappearances."<sup>30</sup>

Conversely, the Mexican government emphasizes its sovereignty to pursue crimes committed within the country.<sup>31</sup> In a statement issued in response to Congress's decision to withhold the \$26 million, the Mexican Foreign Ministry claimed, "Cooperation with the United States against transnational organized crime through the framework of the Merida Initiative is based on shared responsibility, mutual trust and respect for the jurisdiction of each country, not on unilateral plans for evaluating and conditions unacceptable to the government of Mexico."<sup>32</sup>

Additionally, Mexico has made several recent judicial and law enforcement reforms aimed to protect human rights.<sup>33</sup> All police and army training now include 56 hours dedicated to human rights issues.<sup>34</sup> Mexico also passed several judicial reforms in 2008, ensuring oral trials with cross-examination of witnesses and increased focus on due diligence.<sup>35</sup> However, states are not required to implement the judicial reforms until 2016.<sup>36</sup> Mexico has furthermore strengthened the federal police force, and raised pay to deter

corruption.<sup>37</sup> Several drug trafficking tasks, once the responsibility of the Mexican military, are now the responsibility of the navy, a department less associated with human rights abuses.<sup>38</sup>

The State Department admits that Mexico has quite some ways to go before the human rights requirements under Merida can truly be met.<sup>39</sup> Meanwhile, human rights organizations claim that the State Department must harmonize its treatment of Mexican human rights violations when releasing Merida funds.<sup>40</sup> According to WOLA associate Maureen Meyer, “You cannot fight crime with crime, and you cannot fight drugs while tolerating abuses by your security forces.”<sup>41</sup> However, the recent withholding does represent a step in the right direction, as Meyer adds, “The importance of the announcement is that a message was sent to Mexico that we will withhold funding based on human rights issues.”<sup>42</sup>

Such a demonstration may carry increasing weight in Mexico as the U.S. currently discusses an extension of the Merida Initiative for several more years, but this time with significantly larger portions of the budget dedicated towards legal reform in Mexico.<sup>43</sup> Already, of the \$310 million the Obama Administration has requested for Merida programs in 2011, \$207 million was requested under the “Governing Justly and Democratically” aid category.<sup>44</sup> With the Merida Initiative set to expire this year, the announcement increasing focus on human rights and judicial abuses comes at a crucial time in determining future extensions of the plan, and in shaping the direction of any continued funding.<sup>45</sup>

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#### NOTES

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4 *Id.* at 6.

5 *Id.*

6 *Id.* at 6, 29.

- 7 *Id.* at 5-6.
- 8 *Id.* at 22.
- 9 *Id.*
- 10 Human Rights Watch, *supra* note 1.
- 11 *Id.*
- 12 *Id.*; CRS Report, *supra* note 3.
- 13 Human Rights Watch, *supra* note 1.
- 14 *Id.*
- 15 *Id.*
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- 22 *Id.*
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- 26 *Id.*
- 27 NACLA, *supra* note 17.
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- 42 Telephone Interview with Maureen Meyer, *supra* note 29.

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43 CRS Report, *supra* note 3, at 24.

44 *Id* at 24-5.

45 Merida July GAO Report, *supra* note 39.