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Debate Over Death Penalty Resurfaces in Mexico

by LADB Staff
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The debate regarding the death penalty has resurfaced in Mexico, but not in the context of US-Mexico relations. The Mexican government, especially during the administration of President Vicente Fox, has been very vocal in opposing capital punishment imposed by US state governments on Mexican nationals. Earlier this year, Mexico gained a partial victory when the International Court of Justice at The Hague, also known as the World Court, ordered US authorities to postpone the execution of three Mexican citizens on death row in the US (see SourceMex, 2003-02-12).

The debate took a more domestic tone in recent months, especially after several media outlets publicized the sentences imposed by military authorities on two military men, Sgt. Angel Velazquez and Lt. Heron Varela. Each was sentenced for the murder of a superior officer in separate incidents. Velazquez was convicted in 1997 and Varela this year.

Nothing in the Mexican Constitution prohibits capital punishment, although none of the 32 state penal codes contain provisions for the death penalty. The military judicial code, however, allows executions in cases of treason or murder.

Military penal code allows capital punishment

The two capital-punishment cases came to light because Velazquez's relatives appealed to President Fox to use his powers as commander in chief of the armed forces to issue a pardon. Fox agreed to reduce Velazquez's penalty from a death sentence to a 20-year jail term. The same option was offered to Varela, but he chose to go to trial so he could prove his innocence.

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Defense Secretary Clemente Vega said it was unlikely that either Velazquez or Varela would have been executed because military officials have been reluctant to proceed with executions. The last person put to death in Mexico was a soldier convicted of killing his commanding officer and executed in 1961.

Varela has received support from some human rights organizations. "We are demanding that the case of Lt. Heron Varela be resolved with a just trial and that he be given an adequate defense," said Rev. Miguel Concha Malo, director of the Centro de Derechos Humanos Fray Francisco de Vitoria. Defense Secretary Clemente Vega said it was unlikely that either Velazquez or Varela would have been executed because military officials have been reluctant to proceed with executions. The last person put to death in Mexico was a soldier convicted of killing his commanding officer and executed in 1961.

Still, the possibility that the death penalty could be used in Mexico has prompted a movement by academics and legislators to seek comprehensive reforms to the military code that would not only eliminate the capital-punishment provision but would require the armed forces to respect the human rights of its members and of the civilian population.

Along with working to purge the death penalty from the military penal code, a panel of human rights experts is pushing for the creation of a special military ombudsman to watch over the rights of enlisted personnel. This panel includes Gen. Jose Francisco Gallardo, who was imprisoned for
almost 10 years after publishing an article highly critical of the army's human rights record (see SourceMex, 1999-01-20 and 2002-02-13).

The Mexican Congress is already considering an initiative to eliminate the death penalty from the military justice code. Sen. Sádot Sanchez Carreno, who chairs the human rights committee (Comision de Derechos Humanos) in the upper house, said a proposal to amend the Constitution to implement the reforms could be ready by mid-December. "There is no purpose in retaining a provision for capital punishment that is not ever applied," said Sanchez, a member of the former governing Partido Revolucionario Institucional (PRI).

The proposal is widely endorsed by senators from all parties, but it has not gained unanimous support. Among the dissenters is PRI Sen. Ramon Mota Sanchez, who is on leave from his post as Army general. "[The death penalty] is a necessary deterrent to maintain discipline in the armed forces," said Mota.

Mota's position, however, runs counter to that of the military hierarchy and the Secretaria de Defensa Nacional (SEDENA), which support the constitutional changes. Speaking to reporters, deputy defense secretary Adm. Armando Sanchez Moreno cited the need to make the necessary changes to allow Mexico to "catch up with the times." The proposal to eliminate the death penalty from any judicial code has surfaced previously.

In April of this year, the delegation of the center-left Partido de la Revolucion Democratica (PRD) drafted an initiative seeking the necessary constitutional changes to purge any mention of the death penalty from Mexican law. The initiative gained support from the governing Partido Accion Nacional (PAN) and three other small parties. Poll finds support for death penalty in Mexico state Conversely, there have been efforts to codify the death penalty in some state constitutions.

Controversial survey in Mexico state

In February of this year, Mexico state PRI leader Isidro Pastor suggested that members of his party in the state legislature should pursue reforms in the state penal code to allow the possibility of capital punishment. Pastor said his position is based on a survey conducted by his party, in conjunction with the Partido Verde Ecologista Mexicano (PVEQM).

The survey, which polled about 10% of the registered voters in Mexico state via telephone and the Internet, indicated strong support for the use of capital punishment to deter certain crimes such as kidnapping, murder, and child abductions. The survey also asked whether life sentences should be imposed on rapists and on corrupt police officers and judges. "The results were very clear," said Pastor. "We asked the people and the people responded. We have to act accordingly."

The PRI and PVEQM admitted the referendum was a strategy to gain support for the coalition in the March election, where voters selected the new members of the state legislature and several mayors. The PRI-PVEQM coalition made small gains in those elections, although it is unclear whether the capital-punishment issue had a major impact on voter preferences (see SourceMex, 2003-03-19).
The decision of the PRI-PVEM to hold the referendum drew criticism from several legal scholars. Law professor Enrique Diaz Aranda of the Universidad Nacional Autonoma de Mexico (UNAM) said the referendum was simply a PRI-PVEM election ploy. "This was demagoguery to win votes," said Diaz Aranda. "It has been proven that, even when penalties have been toughened, these crimes have not diminished."

The referendum also prompted a response from President Fox, an outspoken opponent of capital punishment. "Personally and as president I am totally opposed to this country establishing the death penalty," Fox said in an interview with reporters. Fox made his position known in August 2002 when he canceled a visit to US President George W. Bush's ranch in August after US authorities refused to halt the execution of a Mexican convicted of killing a Dallas police officer.

A potential inconsistency

The existence of any penal code allowing capital punishment in Mexico could be an embarrassment to Fox, who is continuing efforts to prevent execution of Mexicans in the US. Mexico seeks appeals for nationals on death row in US. In June of this year, the Fox administration filed another appeal with the World Court seeking international intervention to gain a stay of execution for 54 Mexican nationals on death row in the US.

As was the case with the three in which the court intervened earlier this year, Mexico argued that the Mexicans had not received proper representation during and after their arrest because law-enforcement authorities failed to contact Mexican consular officials.

In laying out its position, the Fox government has cited the Vienna Convention, a 1963 treaty signed by the US, which requires an "arresting government" to notify a foreign national of the right to talk with the detainee's consulate or embassy, and foreign governments can arrange legal help for their nationals.

The Fox government won a favorable ruling from the World Court, which said that the US should delay the executions of several of the inmates on death row while the court investigates whether the Mexican nationals were given their rights to legal help from the Mexican government.

One Mexican national on death row, Osbaldo Torres Aguilera, tried to take his case to the US Supreme Court. Torres, sentenced to death in Oklahoma on charges of killing a couple in Oklahoma City, contends that police and other authorities never told him he had the right to meet with Mexican consular officials after his arrest.

Torres' efforts to bring the case to the Supreme Court failed. In a decision handed down without comment in mid-November, the court refused to hear the appeal. Justices John Paul Stevens and Stephen Breyer dissented from the decision of the full court. Breyer argued that the Supreme Court should not have disposed of the Torres case until the World Court had completed its deliberations.

(Sources: El Financiero, CNI en Linea, 02/17/03, 02/19/03; Los Angeles Times, 02/19/03; Spanish news service EFE, 02/25/03; Notimex, 02/19/03, 04/19/03; Agencia de noticias Proceso, 02/17/03, 05/27/03; Associated Press, 02/15/03, 02/17/03, 11/17/03; Milenio Diario, 02/19/03, 11/21/03; El Sol de Mexico,
La Cronica de Hoy, 11/21/03; The Herald, 11/21/03, 11/24/03; La Jornada, 02/17/03, 07/16/03, 11/21/03, 11/25/03)

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