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# Supreme Court Rules that Civilian Courts Must Have Jurisdiction in Cases Involving Military Violations of Human Rights

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Mexico's high court (Suprema Corte de Justicia de la Nación, SCJN) made what many consider a historic decision by ruling that civilian courts must have jurisdiction in trials of military personnel charged with torture, extra-judicial killings, and other serious human rights violations. The court's decision is compatible with similar efforts by the executive and legislative branches. In November 2010, President Felipe Calderón sent an initiative to the Senate to amend Mexico's military code to allow civilian courts to judge military personnel in cases of human rights violations ([SourceMex, Nov. 3, 2010](#)).

The SCJN's unanimous decision, handed down on July 12, represents a radical change in the legal treatment of military personnel. For decades, Mexico allowed its armed forces to act with impunity, and any human rights violations were either swept under the rug or did not come to light because the victims were afraid of retribution or did not think their complaints would be heard. In many cases, active or retired members of the armed forces or the police acted as enforcers for local bosses or politicians, employing torture and other brutal methods to suppress dissent ([SourceMex, Aug. 7, 1991](#)), ([Aug. 13, 1997](#)) and ([Oct. 16, 2006](#)).

The Mexican armed forces already had a bad reputation with the public, with soldiers participating in crackdowns of student demonstrations in Tlatelolco in 1968 ([SourceMex, Feb. 6, 2002](#)).

In the face of constant criticism from international human rights organizations, some Mexican leaders like ex-President Vicente Fox pledged to eradicate torture ([SourceMex, March 7, 2001](#)). And the Mexican Congress made minor changes, such as giving the semi-independent human rights commission (Comisión Nacional de Derechos Humanos, CNDH) greater powers ([SourceMex, Oct. 7, 1998](#)) and ([Nov. 17, 1999](#)). These efforts did not amount to much, as complaints of human rights violations by the military continued ([SourceMex, Nov. 15, 2006](#)).

Scrutiny of the armed forces increased when Calderón launched his intense effort in 2006 to fight drug traffickers with units from the Army and the Navy ([SourceMex, Jan. 24, 2007](#)). In their zeal to go after the drug traffickers, military personnel acted with impunity in the communities where they were assigned, often violating the rights of innocent civilians through torture, rape, arbitrary arrests, and murder ([SourceMex, Feb. 20, 2008](#)) and ([July 16, 2008](#)). Some human rights advocates, including the international organization Human Rights Watch (HRW), say complaints about military violations of human rights increased significantly during Calderón's drug-interdiction campaign ([SourceMex, Aug. 12, 2009](#)).

Calderón is quick to acknowledge that the drug-interdiction war has led to human rights violations by the military, but he also points out that the drug cartels have committed worse offenses. "[Organized crime] has become the main threat to human rights in our country," said the president.

"It is these criminals, and not the state, who are attacking journalists, activists, migrants, and honest citizens in Mexico and Latin America."

The SCJN's decision will bring an important change: high-level officials at the Secretaría de la Defensa Nacional (SEDENA) and other entities will no longer be able to interfere with the judicial process. Under established practice, the defense secretary had the prerogative to order the removal of judges deemed not friendly to the military. Or in some cases, the judges surrendered their independence to remain in the good graces of the political powerbrokers.

"Eager to remain on good terms with their de facto bosses, judges often appeared to bury cases that would reflect poorly on the military," said . "As a result, critics say, convictions were exceedingly rare, even in cases that appeared straightforward."

### *International tribunals influenced SCJN decision*

Chief Justice Juan Silva Meza, in his summary of the SCJN's decision, said the ruling would bring Mexico closer to the goal of "becoming a nation where human rights are truly respected." He said the court's decision should be understood as the next step in a process of structural changes to improve the human rights culture in Mexico. These include ratifying the American Convention on Human Rights and Mexico's decision to submit to the jurisdiction of international tribunals such as the Inter-American Court of Human Rights (IACHR) and the International Criminal Court (ICC). The Mexican Congress voted in 2004 to recognize the jurisdiction of the ICC ([SourceMex, Dec. 15, 2004](#)). The Congress and Mexican state legislatures recently approved a change to the Mexican Constitution that codified protection of human rights as the law of the land ([SourceMex, May 25, 2011](#)).

The SCJN's move to support a recent IACHR directive was a prelude to its decision to open the military to civilian trials. In that directive, handed down in 2009, the IACHR ruled that Mexico had failed to investigate the 1974 case of a man allegedly disappeared by the military. The international court ordered Mexico to reform its military code of justice, which sends military personnel to military tribunals for trial even when the alleged victims are civilians.

"We, the members of the judicial branch, are able to continue to add links to this chain," said Silva Meza, praising the executive and the legislative branches for their willingness to accept change. "It does not stop here and must continue to grow so that the link between the powers and those they serve can be strengthened."

But others question whether the court would have acted had Mexico not agreed to submit to the rulings of international tribunals. "The paradox is that it took a directive from an international tribunal to force the Mexican state to comply with a provision that is already found in our own Constitution," said syndicated columnist Sergio Sarmiento. "Article 13 specifically spells out that there must not be any special tribunals and that civil courts would have jurisdiction in any cases involving civilians. Tradition and the military code had given military courts an unconstitutional power that lasted for way too long."

Human rights advocates were generally pleased with the court's decision. "This is a very significant advance," said Andrés Díaz, an attorney for the Centro de Derechos Humanos Miguel Agustín Pro Juárez (PRODH). "It spells out very clear principles for Mexican judges."

Advocates agreed about the historic nature of the ruling because the Mexican government will now have to accept decisions of international tribunals that require compensation to victims and public apologies. "What the court did was to expedite a trend that was already in motion," said Sergio Méndez Silva, an attorney with the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH). "In other words, the court is sending a political, juridical, and moral message that these types of human rights issues have to be resolved in this manner."

But advocates are being cautious about whether civilian courts can be efficient and sufficiently free of corruption to guarantee that justice is served in Mexico. A popular documentary released in March of this year exposed major flaws with Mexico's judicial system ([SourceMex, March 23, 2011](#)). "We can transfer all the cases we want," Alberto Herrera, director of Mexico's chapter of Amnesty International (AI), said in a television interview. "But if civilian justice doesn't function, none of this will amount to much."

Within 24 hours of the court's decision, several human rights advocates began to plan to bring lawsuits in civilian courts against 42 officers and soldiers involved in killing civilians who had no apparent link to organized crime. The incidents—which took place in the states of Sinaloa, Tamaulipas, Durango, Coahuila, Puebla, and Nuevo León—were documented during a five-month period. "The legal situation of military personnel who had by mistake killed civilians without any links to organized crime was a matter that could only be dealt internally in the Army before July 12," said the daily newspaper, based in Saltillo, Coahuila state.

In Congress, political leaders from all three major parties generally expressed full support for the high court's decision. The governing Partido Acción Nacional (PAN) linked the high court's decision to the recently approved changes to the Constitution that make protection of human rights the law of the land. "All authorities, within the framework of their mandate, must make every effort to respect, protect, and guarantee human rights," read the party's prepared statement.

Sen. Carlos Navarrete and Deputy Armando Ríos Piter, legislative coordinators of the center-left Partido de la Revolución Democrática (PRD), said the party plans to propose creating special courts to deal with members of the military accused of human rights violations.

Deputy Francisco Rojas Gutiérrez, floor leader for the opposition Partido Revolucionario Institucional (PRI) in the Chamber of Deputies, moved to dispel the notion that the change would leave the armed forces exposed. "No, I do not believe that this decision will weaken the armed forces....We are working on the National Security Law so that we can regulate the behavior of our armed forces," Rojas said.

### *Military personnel fear repercussions*

Still, there are strong concerns among many members of the military that the high court's decision could lead to a witch hunt and to instances where false accusations are brought against soldiers and marines. "There are many complaints filed by cartel members accusing us of violating their rights," an Army colonel said in an interview with the Mexico City daily newspaper.

There have been several public demonstrations against the military around the country. One demonstration that drew some media attention was organized by a group of youth who called themselves the "Tapados de Monterrey" because of the masks they wore. But authorities discovered that this demonstration and other similar events were actually organized by groups financed by the

drug cartels. In the Monterrey protest, youth were recruited from poor neighborhoods and paid between 200 and 500 pesos (US\$17.00 to US\$43.00) to take part in the demonstrations.

There have been instances where drug traffickers have not hidden their role in the demonstrations. For example, Rafael Cedeño Hernández, a leader of the La Familia cartel, led one protest in Michoacán state.

Some high-level military officers and officials from the Secretaría de la Defensa Nacional (SEDENA) and the Secretaría de Marina-Armada de México (SEMAR) have requested meetings with key senators to ask them to pass a law to create a legal framework that defines the rights of military personnel.

"As long as we don't have a law to protect us, we won't be able to attend to the citizen complaints [against organized crime]," a general told . "If for example, we arrive at a location where people are being tortured or kidnap victims are being held, we won't be able to enter because we won't have a warrant."

Others raised concerns that trials could lead to retaliation even before a case is resolved. "If we act, and we are accused, then our names will be made public," a Navy official said. "This endangers the life of the accused and also his or her family."

Even before Calderón involved the military in direct confrontations with the drug cartels, the armed forces were playing a role in the drug war. Often, when marijuana and poppy plantations were discovered in remote rural areas of Mexico, the Army was brought in to dispose of the illicit plantings ([SourceMex, Oct. 30, 2002](#)), ([July 26, 2006](#)), and ([Feb. 23, 2011](#)).

And the armed forces continue to play this role. In mid-July, SEDENA announced that the Army had discovered the largest marijuana plantation ever detected in Mexico, a huge field covering almost 120 hectares, in the Baja California peninsula near the Guerrero Negro-Ensenada highway. The plantation is four times larger than the previous record discovery by authorities at a ranch in Chihuahua state in 1984. The plants were sheltered under black screen-cloth in a huge square on the floor of the Baja California desert.

"We estimate that approximately 60 people were working in this area. When they saw the military personnel, they fled," Gen. Alfonso Duarte told reporters. SEDENA estimates that the plot contained about 120 tons of marijuana, worth about 1.8 billion pesos (US\$154 million). Authorities later detained 58 people connected to the operation.

The military also had a role in the discovery and seizure of almost 90 kg of cocaine found buried in the sand in the resort cities of Playa del Carmen, Cozumel, and Cancún during a two-week period in July. SEDENA officials did not provide further details. Quintana Roo state, where the three resort cities are located, is known to be an entry point for cocaine shipments from South America (Jan. 6, 1999 ID 054474 and March 11, 2009 ID 050897). [Peso-dollar conversions in this article are based on the Interbank rate in effect on July 20, 2011, reported at 11.65 pesos per US\$1.00.]

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