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President Felipe Calderón Signs Legislation Eliminating Pocket Veto

by Carlos Navarro

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Two very important changes to the Mexican Constitution became part of the public discourse in Mexico during the summer months. Both changes promise to have a fundamental effect on Mexico's legal and political structures.

One change, the elimination of the pocket veto, would restore greater balance between the executive and the legislative branches. That change became a reality when President Felipe Calderón put his signature on a constitutional amendment eliminating this procedure, which allowed chief executives to kill legislation by simply refusing to sign it.

The second change, the elimination of the , addresses one aspect of how Mexico deals with human rights and due process. A handful of federal legislators have broached the possibility of introducing constitutional amendments to eliminate the , a legal maneuver allowing authorities to detain suspects pending further investigation, even in cases when formal charges have not been filed.

But there is no current move at the federal level to eliminate the , although the Chiapas state legislature recently approved a state constitutional amendment banning the practice within the state's borders. Legislators in Campeche state are considering a similar measure.

Congress, President Calderón on same page on ending pocket veto

In late August, Calderón approved changes to Articles 71, 72, and 78 of the Mexican Constitution that eliminate the pocket veto. This measure had been available to the executive since 1812 but was used only sporadically between the 1930s and 2000, when the Partido Revolucionario Institucional (PRI) tightly controlled the presidency and Congress.

In the 1990s, the opposition parties managed to whittle down the PRI's strong grip on Congress, particularly with the 1997 election ([SourceMex, July 9, 1997](#)), creating the potential for a power struggle between President Ernesto Zedillo's PRI government and the Congress, led by the Partido Acción Nacional (PAN), Partido de la Revolución Democrática (PRD), and others. But the wins only gave the opposition parties a razor-thin margin over the PRI, so the pocket veto was not an issue during the last three years of the Zedillo government.

In 2000, when the PAN came to power with President Vicente Fox's victory, the pocket veto took on greater importance. The PRI, which became an opposition party in Congress, began to side on occasion with the PRD and other smaller parties to send legislation that a generally conservative president often opposed. Sometimes Fox would exercise outright vetoes ([SourceMex, March 21, 2001](#)) and ([March 23, 2006](#)), but on several occasions, he simply failed to act on legislation, thus allowing a bill to die.

The Mexico City daily newspaper said Fox used the pocket veto seven times during his tenure in office.

The vetoes and threat of vetoes resulted in a showdown between Fox and Congress that went all the way to the high court (Suprema Corte de Justicia de la Nación, SCJN) in 2005. At issue was the question of whether a president had the right to veto the budget. The SCJN at first upheld Fox's argument that the executive branch could veto a budget plan, but the court later amended its ruling by allowing Congress to override such a veto with a two-thirds majority ([SourceMex, May 18, 2005](#)).

Fox's successor, Felipe Calderón, employed the pocket veto six times between 2006 and 2010, including a measure that would have required banks to reduce interest rates on credit cards. There was concern that the president would resort to this measure a seventh time when legislation to codify protection of human rights came to his desk. The concern arose because Calderón did not immediately sign the bill ([SourceMex, May 25, 2011](#)). But the president signed the measure before the 30-day period expired.

The Congress made previous attempts to eliminate the pocket veto, including approving legislation in 2003 to restrict the president's use of the measure ([SourceMex, April 23, 2003](#)). The bill approved by the Chamber of Deputies failed to become law, leaving the executive and legislative branches at odds regarding the issue.

The Congress continued its quest to eliminate the pocket veto by seeking changes to the Constitution. A measure to that effect was sent to Calderón this year, but the president was slow to act. This prompted the leaders of the joint committee of the Chamber of Deputies and Senate (Comisión Permanente) to consider steps to bring the matter to the SCJN. But the process would have taken some time, since a complaint to the high court would have to come via the appropriate committee in the Senate.

But the Calderón administration said it had every intention of signing the constitutional changes and made that very clear when the president finally signed the bill on Aug. 16.

A statement from the administration said the change would strengthen democracy and improve the relationship between the executive and legislative branches. "The presidency of the republic reiterates its firm commitment to develop a permanent collaboration among [the legislative and executive branches] using the institutional mechanisms available," the administration said in a prepared statement. "We aim to contribute to improving the legislation process and thus guarantee the consolidation of our democracy."

Under the measure signed by Calderón, the president must comply with a deadline for presidents to act on legislation approved by Congress. The executive will now have 30 days to either approve a bill or return it to Congress to reconsider, which is tantamount to a veto. Legislation would be considered enacted law if the president did not act within the 30-day time frame.

Observers agree that the president's decision to sign the measure is an important development for Mexico. "This is without a doubt an important milestone for our efforts to find a balance among the branches of government," columnist Pedro Gutierrez Varela said in the online site Sexenio.com.

Raúl Alejandro Padilla Orozco, a columnist for , said the measure would allow both the executive and legislative branches to deal with important legislation in a more efficient and democratic manner. "Mexico wins with this decision to eliminate the president's discretionary power to exercise a veto in this manner," said Padilla Orozco.

Padilla Orozco pointed out that the measure is timely because the government must respond quickly to the growing demand by citizens for a more equitable economic and legal system. "This is especially important given the uncertainty created by the financial crisis in Europe and the US," said the columnist.

Chiapas becomes first state to ban detentions without charges

In contrast to the move to eliminate the pocket veto, there does not appear to be any initiative in the Congress at the moment to eliminate the . And there has been much criticism at home and abroad about the practice, which allows authorities to hold suspects for 40 days without charging them.

"What if I tell you that you are guilty but I don't have any proof but I can still send you to jail for 40 days?" political commentator Eduardo Ruiz Healy said in a radio forum on the Grupo Fórmula radio network.

The continued use of the is confusing because the SCJN already ruled in 2005 that the practice violates Article 19 of the Constitution. But nationally syndicated columnist Sergio Sarmiento said politicians found a loophole to continue the detentions without charges by making some changes to Article 16 of the Constitution. The changes allowed authorities to detain any individual indefinitely if charged with participating in activities related to organized crime. The amendment set the limit for detentions without charges at 40 days.

"Organizations that advocate for human rights have denounced the in its current form. Authorities, however, maintain the argument that it is needed to combat organized crime," said Sarmiento.

But proponents of ending the practice are confident that changes are coming because of comprehensive reforms to the judicial system in 2008 ([SourceMex, March 12, 2008](#)). Those reforms stipulated that states would have to implement any changes approved as part of the new law within eight years.

"There is no room for the in this legal framework," said Zoé Robledo Aburto, who as president of the Chiapas state legislature was instrumental in pushing through the changes in the state constitution that eliminate this practice. Robledo Aburto is a member of the Partido de la Revolución Democrática (PRD).

Other Chiapas legislators, including state Sen. Manuel Velasco Coello, played a key role in promoting the change. "Today, Chiapas exercises its sovereign rights to approve a measure that exemplifies its commitment to human rights," said Velasco, who belongs to the Partido Verde Ecologista de México (PVEM).

The move by the state of Chiapas to eliminate the at the end of July won wide acclaim from Mexican and international human rights advocates. Juan Carlos Gutiérrez Contreras, director of the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), said the decision by the state legislature and Gov. Juan Sabines Guerrero to promote the measure was a sign that the state supports an "unconditional respect for human rights."

"We have to congratulate the Chiapas state legislature for sending the signal that the violates human rights and that no one who comes before the state legal system can be detained without cause," Ruiz Healy said in a the Grupo Fórmula forum.

Felipe González, a special rapporteur for the Inter-American Commission on Human Rights (IAHCR), praised the state of Chiapas for implementing the change. He also singled out the Sabines administration and the state legislature for enacting changes to protect the rights of Central American migrants traveling through the state on the way to the US.

But Robledo Aburto and others credited international organizations with prompting the state of Chiapas to move forward even if the matter was not being addressed as quickly at the national level. "We heard a variety of voices criticizing us for arbitrary detentions, including the UN Commission on Human Rights (UNCHR), which had asked our country on numerous occasions to eradicate and eliminate the ," said the Chiapas legislator.

Robledo Aburto said approving the legislation is only a first step. "Our most important task now is to change the manner in which our investigative and prosecuting agencies perform," said the state legislator. "We have to strengthen our concept of due process within the framework of respect for human rights."

Human rights advocates seek wider ban of practice

Other states might follow the lead of Chiapas. "This is a matter that might be worthwhile to consider in Campeche," said Gov. Fernando Ortega Bernés, who has put together a proposal for the state legislature to eliminate the .

There is also pressure in the Federal District, which comprises primarily Mexico City, to consider similar reforms. The Comisión de Derechos Humanos del Distrito Federal (CDHDF) has begun to lobby the Mexico City legislative assembly (Asamblea Legislativa del Distrito Federal, ALDF) to consider changes to the legal code that would eliminate the . "We believe that the practice violates the right to liberty, personal integrity, and the principle of presumption of innocence," the CDHDF said.

Some church leaders, like Bishop Felipe Arizmendi Esquivel of the Diocese of San Cristóbal de las Casas, lauded Chiapas for taking the initiative to eliminate the practice and urged all the other states to do the same. "The federal government and all the other states should follow suit and eliminate this practice," Arizmendi said in an interview.

But even with the piecemeal effort by states to enact changes that affect their own borders, some voices are pushing for the federal Congress to make the changes at the national level. Sen. Carlos Navarrete, PRD floor leader in the upper house, has pledged to lead an effort in the federal Congress to fully eliminate any use of the in Mexico. This could be accomplished by reversing the changes to Article 16 enacted after 2005.

Opposition parties have accused the Calderón administration of illegally detaining elected officials without charges because of suspicions that they worked closely with the drug cartels. "This maneuver has been used recklessly and for electoral purposes against innocent people," said Navarrete.

The officials detained on charges of conspiring with drug cartels are mostly from the opposition, including several mayors and other officials in Michoacán state ([SourceMex, May 27, 2009](#)), ex-Cancún mayor Gregorio Sánchez Martínez ([SourceMex, June 2, 2010](#)), and ex-Tijuana mayor Jorge Hank Rhon ([SourceMex, June 22, 2011](#)).

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