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Carlos Navarro

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Citizen Coalition to Bring President Felipe Calderón's Failed War against Drug Traffickers to International Criminal Court

by Carlos Navarro

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In what many experts view as a bold move, a coalition of human rights advocates, legal scholars, and journalists are planning to file a complaint against President Felipe Calderón at the International Criminal Court (ICC) for his five-year campaign against drug cartels, which they claim is responsible for tens of thousands of deaths in Mexico. Some experts are skeptical that the ICC will take on this case because the Dutch-based court generally does not intervene unless it determines that a country lacks strong enough internal structures to address serious claims such as genocide.

The Mexican president is also facing legal action on another front: the Partido Revolucionario Institucional (PRI). The long-governing party, which lost the presidency to the conservative Partido Acción Nacional (PAN) in 2000, took issue with comments that Calderón made to *The New York Times*, in which he said that some members of the PRI are considering negotiating a pact with criminal organizations to resolve the problem of violence. But PRI members are not the only ones who have recommended this course of action. Calderón's predecessor, ex-President Vicente Fox, has suggested that the government seek discussions with drug-cartel leaders, in much the same way it did with the Ejército Zapatista de Liberación Nacional (EZLN) in Chiapas in 1995.

Alliance includes human-rights advocates, legal scholars, journalists

The groups leading the effort to bring Calderón before the ICC include the Asociación Nacional de Abogados Democráticos (ANAD), the Instituto Mexicano de Derechos Humanos y Democracia (IMDHD), and the Centro de Derechos Humanos Agustín Pro Juárez (PRODH). Journalists Miguel Baldillo of *Contralínea* magazine and national commentator Virgilio Caballero also joined in the action, as did academics Octavio Rodríguez Araujo, Patricia Galeana, Eréndira Sandoval of the Universidad Nacional Autónoma de México (UNAM), and William Weaver of the University of Texas-El Paso (UTEP).

In addition to Calderón, the complaint before the ICC also names the leader of the Sinaloa cartel, Joaquín "Chapo" Guzmán Loera, and several members of the president's Cabinet, including Public Safety Secretary Genaro García Luna, Defense Secretary Guillermo Galván Galván, and Navy Secretary Mariano Francisco Saynez Mendoza.

In addition to Calderón, the complaint before the ICC also names the leader of the Sinaloa cartel, Joaquín "Chapo" Guzmán Loera, and several members of the president's Cabinet, including Public Safety Secretary Genaro García Luna, Defense Secretary Guillermo Galván Galván, and Navy Secretary Mariano Francisco Saynez Mendoza.

The group attempted to show broad support from civil society, collecting more than 20,000 signatures, which will be presented along with the complaint to ICC prosecutor Luis Moreno

Ocampo at the court's headquarters in The Hague on Nov. 25. "We need to do something. No one outside the territory is going to do it for us," Baldillo said in an address at the Club de Periodistas de México in downtown Mexico City.

Netzai Sandoval Ballesteros, one of the human rights lawyers spearheading the effort, said the complaint urges the ICC to seek information directly from Calderón's government about the effects of its policies against the drug cartels. Specifically, the complainant wants the court to determine responsibility for the deaths of 50,000 people since Calderón launched his all-out effort against the drug cartels in 2006 ([SourceMex, Jan. 24, 2007](#)). A large number of the deaths are probably people associated with the criminal organizations, but an increasing number of civilians are being killed, said the complaint.

In addition to the deaths, the complaint also wants the court to consider other factors, including the disappearance of 10,000 people, the recruitment by cartels of 35,000 to 40,000 minors (15 years of age or younger), and the displacement of 230,000 people who have abandoned their communities because of increased violence.

"The Mexican government has failed to sanction any behavior [within its ranks] that violates international rights," said Sandoval Ballesteros. "This decision not to prosecute violations is apparently state policy."

The complaint is sailing on uncharted waters. While Mexico is a signatory to the 2002 Rome statute that established the court, there is no guarantee that the ICC will take up the case. In the past, the court has assumed cases involving states that lack sufficiently strong internal structures to tackle such serious claims as genocide. Thus, the court has mostly handled claims from war-torn countries in Africa.

The coalition acknowledged that some issues must be handled internally. "The petition does not imply asking for a judgment against Calderón simply because of his flawed anti-drug policy or against the drug traffickers for their activities," said Sandoval Ballesteros. "These types of judgments should take place in our country."

But Sandoval Ballesteros said the Mexican leadership should be held accountable at the international level. "The chief executive and his civilian and military team, as well as the drug kingpins, are the ones responsible for these crimes."

As expected, the Calderón administration took issue with the contention by the coalition that its security policies had resulted in the commission of war crimes or crimes against humanity that should be judged at the ICC. "The strategic actions of national security are carried out with a clear observance of the law, with the goal of halting the activities of criminal organizations, to bring their members to justice, and to halt the violence and insecurity that they generate," said the Secretaría de Relaciones Exteriores (SRE), which offered assurances that respect for human rights is an important element of the campaign against drug traffickers.

The SRE also noted that a major aspect of the administration's policies is to combat corruption. The administration has prosecuted many politicians accused of complicity with the drug cartels ([SourceMex, May 27, 2009, August 19, 2009, and June 2, 2010](#)). "The Mexican state takes actions against criminal organizations, as well as against those public servants who have ignored their constitutional and legal responsibilities to the detriment of society," said the SRE.

The SRE statement also suggested that, by bringing the matter before the ICC, the groups are "presenting a mistaken view of Mexico's reality." It said these types of complaints are only justified when a state cannot or will not take legal actions to punish certain crimes that are listed in the Rome Statute. "None of these is applicable to Mexico," said the statement.

Controversial comment fuels dispute between Calderón, PRI

Calderón's campaign against drug traffickers also made controversial headlines on another front. During an interview with *The New York Times* in mid-October, the Mexican president suggested that, if the PRI returns to office after the 2012 presidential election, the party might consider making deals with the drug cartels. Many early polls indicate that the PRI is favored to win the election, with former México state Gov. Enrique Peña Nieto as its representative (SourceMex, Oct. 12, 2011).

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But Calderón also pointed to statements of others like former Nuevo León Gov. Sócrates Rizzo (1991-1996), who once said, "We made arrangements with the criminals and, because of that, nothing happened."

"If you applied that policy today, the only arrangement you could make today is decide whether to leave your house to [Sinaloa cartel leader] Chapo [Guzmán] or the Zetas," said the president.

Calderón's statement angered many PRI leaders, who threatened legal action against the president. But rather than file a defamation suit, which would probably go nowhere, the PRI is charging Calderón with breaching his obligations under the Mexican Constitution to remain absolutely impartial in carrying out his functions. That complaint was presented before the Instituto Federal Electoral (IFE).

Still, the president's comments touched a nerve because the PRI has had a reputation of negotiating with the drug cartels. Some high-profile PRI members, including high-level members of ex-President Carlos Salinas de Gortari's administration, faced accusations of complicity with drug cartels (SourceMex, July 22, 1998). Other high-level PRI members, including ex-Quintana Roo Gov. Mario Villanueva, were also implicated with the drug-trafficking organizations (SourceMex, May 12, 2010).

The *New York Times* interview immediately put PRI officials on the defensive. "The PRI won't make deals with drug cartels or stop fighting criminal organizations," said Deputy Carlos Flores Rico, a spokesperson for the PRI in the lower house.

Flores Rico suggested Calderón made the statements to *The New York Times* simply to deflect attention from his administration's ineptitude in combatting organized crime. "The President wants to change the face of history by doing nothing and playing victim. No sir, you can't justify your ineffectiveness by pointing fingers and lauding yourself during your speeches," said Flores Rico.

Peña Nieto attempted to take a middle road by defending the PRI without directly criticizing Calderón. "I have two reactions to those comments. The first is to point out that my party has demonstrated its unwavering commitment to combat organized crime through the strict application of the law, which by no means implies any sort of negotiation [with organized crime]," said the ex-México state governor. "The second reaction is that members of the PRI cannot overreact to any provocation, no matter where it originates."

In a subsequent interview, Peña Nieto reiterated that there would be no negotiations with criminal organizations under his administration. "There is no possibility of negotiating with these groups. This is an unacceptable course of action," said the ex-governor. "The state has the obligation to combat crime."

While the PRI's comments emphasize that there will be no negotiations or pacts with organized crime, politicians from both parties have suffered negative political repercussions for making comments suggesting the opposite course of action. In 2006, PRI Deputy Jesús Humberto Martínez de la Cruz created an uproar when he suggested that the best way to deal with Mexico's seemingly uncontrollable drug-trafficking problems would be to strike a deal with the major cartels. "This means staying in contact with them and coming to an ongoing agreement because this is better than admitting that we can't do anything to address the situation," Martinez said at that time ([SourceMex, April 19, 2006](#)).

A PAN official also sparked controversy with comments made in 2009. Assistant agriculture secretary Jeffrey Max Jones, who is also a former federal legislator, was forced to resign from his post at the Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (SAGARPA) after he suggested to representatives of farm organizations that they follow the business strategies of the drug cartels to improve their marketing positions ([SourceMex, Nov. 4, 2009](#)).

Another high-profile PAN member, ex-President Fox, recently suggested discussions with the drug cartels. In comments to reporters in mid-October, Fox suggested that the government create a special committee to negotiate with the drug-trafficking organizations, similar to one set up for talks with the EZLN in the 1990s ([SourceMex, March 15, 1995](#)). Fox said he was not suggesting that the government negotiate a compromise with the drug-trafficking organizations but rather that it open an avenue for dialogue. When asked whether it was appropriate to sit down with lawbreakers, he pointed out that the Chiapas commission "sat down with a criminal, with [EZLN leader] Subcomandante Marcos."

Fox is no stranger to controversy regarding links to the drug cartels. During his term in office, there were allegations that the Sinaloa cartel had infiltrated the executive branch ([SourceMex, Feb. 23, 2005](#)).

The very suggestion that the government reach out to the cartels caused discomfort among some prominent PAN politicians. "We cannot open a negotiation, nor can we negotiate a truce, nor can we give anyone amnesty," said Josefina Vázquez Mota, who was granted leave from her duties in the Chamber of Deputies so she could compete for her party's presidential nomination.

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