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Congress Unanimously Approves Legislation Requiring That Civilian Courts Try Criminal Complaints Against Military Personnel

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The Senate and Chamber of Deputies each unanimously approved changes to Mexico’s military code that would allow civilian courts to try members of the armed forces when a crime is committed against civilians. Under the new guidelines, approved in April in both legislative chambers, military prosecutors are obligated to turn cases over to civilian courts when where a member of the armed forces has committed a violation that should be heard outside the jurisdiction of a military court.

The change is seen as an important step in addressing what had been considered a major deficiency in the protection of human rights in Mexico. While the military has been implicated in the violation of civilian rights in Mexico through the years (SourceMex, Aug. 13, 1997, July 21, 1999, Oct. 16, 2002, and Nov. 12, 2003), the situation worsened during the administration of ex-President Felipe Calderón, who made extensive use of the military in drug-interdiction efforts. Soldiers and marines not only went after drug traffickers during those years but also committed acts of violence and torture against civilians (SourceMex, Feb. 20, 2008).

International and domestic human rights organizations argued that complaints about military abuses were going to military courts, where they were dismissed or addressed with leniency (SourceMex, Aug. 12, 2009). Because of these concerns, advocates made a strong push to bring cases of human rights violations by military personnel to civilian courts. The pressure from these organizations might have prompted Calderón to make the first strong push to move the military violations to civilian court (SourceMex, Nov. 3, 2010).

The unanimous vote in both houses of Congress is an indication of broad support for the changes by all the major and minor parties in Congress. "We are obligated to work for better protections for citizens within the legal framework, meeting our commitments to respect human rights as spelled out by the Constitution and international treaties," the delegation of the center-left Partido de la Revolución Democrática (PRD) in the lower house said in a statement on the eve of the vote on April 30.

Deputy José Duarte Murillo, a member of the governing Partido Revolucionario Institucional (PRI) and secretary of the national defense committee (Comisión de Defensa Nacional) in the lower house, said the legislation was drafted with broad input from a broad cross section of experts. "We included the opinions of academics, the military, and domestic and international organizations to develop this new system of protection of human rights."

Legislators said the process was deliberate, to ensure the most complete debate on the issue. "We did not rush anything," said Sen. Fernando Yunes Márquez of the center-right Partido Acción Nacional (PAN) and chair of the national defense committee in the upper house.
An important step

Advocates of human rights at home and abroad lauded the new legislation as an important step in protecting human rights in Mexico. Still, some experts said the Mexican Congress and the executive might not have acted without strong pressure from the outside.

"This has not been a process guided by technical and legal considerations," said Daniel Márquez Gómez, a member of the faculty at the Instituto de Investigaciones Jurídicas (IIJ), which is affiliated with the Universidad Nacional Autónoma de México (UNAM). "This has been the result of a series of legal actions based on concrete violations of human rights. This is a byproduct of painful actions that we hope will not be repeated ever again."

Márquez Gómez pointed in particular to a milestone verdict handed down by the Inter-American Court of Human Rights (IACHR) in 2009, which held the Mexican government responsible for the disappearance of Rosendo Radilla Pacheco in 1974 (SourceMex, Nov. 3, 2010). Radilla was mayor of Atoyac de Álvarez in Guerrero state during the government’s dirty war against dissenters in the 1960s and 1970s. Radilla’s son, Rosendo Radilla Martínez, said the victim was detained only because he composed ballads that criticized the military.

"The favorable verdict by the IACHR led the Suprema Corte de Justicia de Nación (SCJN) to assume the decision, thus creating a mandate for a new standard on human rights to be inserted into Article 57 of the military code," said Márquez Gómez.

Legislators from the PRD said the decision to modify the military code was driven, in addition to the Radilla case, by other high-profile complaints brought before the IACHR. These included the cases of environmental advocates Teodoro Cabrera and Rodolfo Montiel, who were tortured by police and the military for their anti-logging activities in Guerrero state (SourceMex, April 12, 2000, and Nov. 14, 2001). The Costa Rica-based court, part of the Organization of American States (OAS), also reviewed the cases of Inés Fernández and Valentina Rosendo, two indigenous women who were attacked by military personnel in 2002.

Human Rights Watch (HRW) also lauded the votes in both houses of Congress. Nik Steinberg, Americas researcher at the Washington, DC-based organization, said a civilian court, for all its flaws, is not biased against civilians in the same manner as a military court. Steinberg pointed to a recent HRW report entitled Uniform Impunity, which highlights the differences between the civilian and military court systems. The report cites the dismal failure of civilian courts to bring convictions in 96% of cases involving human rights violations, but at least there is due process. The military judicial system, in contrast, offers no public access to trial or prosecution information and is full of incentives for judges to rule in favor of the military,

"Holding soldiers accountable for abuses is one of the most effective ways to help reduce widespread human rights violations by the military," Steinberg said in comments to the Associated Press. "It will now be up to civilian prosecutors to see to it that the huge backlog of military abuses is vigorously and effectively prosecuted."

Torture a ‘generalized’ problem in Mexico

Juan Méndez, special rapporteur on torture for the UN’s Office of the High Commissioner on Human Rights (OHCHR), also praised Mexican legislators for approving the changes to Mexico’s
military code. Speaking in Mexico City following a two-week visit to Mexico, he said it was extremely important that civilian courts would have jurisdiction over human rights violations by military personnel.

The UN official said, however, said he regretted that a "generalized situation" of torture and mistreatment persists in Mexico. Méndez said complaints that detainees have been tortured have arisen in "practically all the police forces that make arrests in this country."

Méndez qualified his remarks, however, saying that there was no evidence that torture in Mexico was "systematic" or promoted by high-ranking government officials. The UN official recommended that a public defender be established in local communities around the country to address complaints of human rights abuses. Such an office would guarantee expedited investigations and full reparations for victims.

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