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Mexico's Supreme Court to Review Controversial Public Safety Law

by Carlos Navarro

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The controversial anti-crime initiative approved by the Mexican Congress before the Christmas recess is going to the high court (Suprema Corte de Justicia de la Nación, SCJN), which will seek to ensure that the measure is in full compliance with the Constitution. President Enrique Peña Nieto, who says he is confident that the measure passes constitutional muster, is a staunch supporter of the initiative but supports a review by the SCJN.

The law, which in essence allows the government to legally use the military for anti-crime efforts, was initially approved in the Chamber of Deputies in late November of 2017 ([SourceMex, Dec. 6, 2017](#)), and then by the Senate in mid-December in a 76-44 vote, with three abstentions.

As was the case in the lower house, support in the Senate came mainly from legislators affiliated with the governing Partido Revolucionario Institucional (PRI) and the conservative Partido Acción Nacional (PAN) and allies like the Partido Verde Ecologista de México (PVEM). Because the Senate made some changes, the measure had to go back to the lower house for a vote. The Chamber of Deputies easily ratified the Senate version and sent it to Peña Nieto before leaving for the holiday break.

An affront to the Constitution

Non-governmental organizations and Mexico's semi-autonomous human rights commission (Comisión Nacional de Derechos Humanos, CNDH) have questioned the legality of the measure.

"We were in the process of putting together a solid document that includes analysis from academics, experts, and non-governmental organizations" to present to the SCJN, the commission said in a message on social media.

Peña Nieto is also seeking a legal opinion from the high court, and has said he won't put the law into practice until the SCJN has ruled on the matter.

"I am aware that this law ... is especially sensitive for the public life of the country," Peña Nieto said in December after the law was sent to his desk for his signature. "For that reason, I will not issue an internal security declaration in the terms of this law until the highest court has decided on its constitutionality."

Opposition legislators who voted against the initiative are urging the SCJN to take a "sensible" approach on the issue, which could come before the court early this year. Miguel Barbosa, one of the leaders of the Partido del Trabajo (PT) in the Senate, said the legislation violates Articles 21 and 89 of the Constitution. Article 21 reserves law-enforcement duties to local police and the prosecution agencies (Ministerio Público) at each level of government. Article 89 gives Mexico's president broad powers, including the use of the armed forces to defend against foreign enemies, but not to conduct law-enforcement duties.

Human rights experts agreed with this assessment, suggesting that the law will never be put into place because the high court will almost certainly declare the measure unconstitutional.

“The definition of interior public safety [in the new law] is ambiguous and violates the language of Article 21, which deals with the safety of the public,” Santiago Corcuera, former chair of the UN Committee on Enforced Disappearances, wrote in the opinion pages of the daily newspaper *El Universal*. “Furthermore, the measure violates the limits of interior security as stipulated in provision VI of Article 89 of the Constitution. “

A deadly year

The debate over Mexico’s policies on public safety comes at a time when crime has spiked significantly around the country, particularly murder. In 2017, Mexico experienced the highest rate of homicides since at least 1997. According to statistics published by the Interior Ministry (Secretaría de Gobernación, SEGOB), more than 23,100 murder investigations were opened in the first 11 months of 2017, surpassing the previous high of about 22,410 in all of 2011.

A separate report from the daily newspaper *Milenio* said the number of deaths resulting directly from confrontations among criminal organizations reached 12,352 in 2017, only slightly below the high of 12,532 recorded in 2010.

Some of the victims of violent crime last year included public officials. According to the national mayors’ association (Asociación Nacional de Alcaldes, ANAC), nine mayors were murdered in 2017, mostly at the hands of criminal organizations. Mayors, particularly those from smaller communities, are vulnerable to threats and extortion from drug cartels ([SourceMex, Sept. 29, 2010](#)). According to ANAC, 52 mayors have lost their lives in Mexico since former President Felipe Calderón (2006-2012) launched a wide-ranging campaign against drug cartels in 2006 ([SourceMex, Jan. 24, 2007](#)).

Mayors are most vulnerable in the states of Durango, Michoacán, Oaxaca, Veracruz, México, Guerrero, Puebla, and Tamaulipas, which are strongholds of criminal organizations, said ANAC. The most recent victim was Arturo Gómez Pérez, mayor of Petatlán in Guerrero state, who was killed on Dec. 28.

Criminal organizations have also targeted union and indigenous leaders, human rights advocates, and journalists. According to a report from the human rights organization Comité Cerezo México, violent crime claimed 48 members of these groups in 2017, surpassing the total of 42 in 2016. The figures from Cerezo include 10 journalists, many targeted for covering the activities of criminal organizations and corrupt public officials ([SourceMex, Aug. 30, 2017](#)). Other reports suggest even higher number of journalists killed. According to the International Federation of Journalists (IFJ), 13 journalists died in Mexico out of a total of 81 members of the news media murdered around the globe in 2017.

A central issue in presidential campaigns

The issue of crime and violence has already become one of the top issues in Mexico’s electoral campaign, and candidate Andrés Manuel López Obrador got an early start in December with a suggestion that perhaps the best way to address the drug-related violence in Mexico would be to enter into a dialogue with the leaders of criminal organizations.

“If it is necessary ... we will talk about granting amnesty, so long as the victims and their families are willing,” said López Obrador, the leader of the center-left party Movimiento Regeneración Nacional

(Morena). He later clarified to reporters: "We'll propose it. I'm analyzing it. What I can say is that we will leave no issue without discussion if it has to do with peace and tranquility."

This is not the first time that politicians have suggested some sort of negotiation with criminal organizations. In 2006, PRI federal Deputy Jesús Humberto Martínez created an uproar with a suggestion that the best way to deal with Mexico's seemingly uncontrollable drug-trafficking problems would be to strike a deal with the major cartels ([SourceMex, April 19, 2006](#)).

In 2009, Jeffrey Max Jones, then-deputy agriculture secretary and a member of PAN, which at that time held the presidency, came under fire for suggesting that farmers follow the business strategies of the drug cartels to improve their marketing positions ([SourceMex, Nov. 4, 2009](#)).

López Obrador's statement came under strong criticism from relatives of victims of the drug cartels and from rivals in the presidential race.

"I would hope they never kidnap, torture, kill, disappear, and burn [his] loved ones," José Díaz Navarro, whose brother was kidnapped and killed in Guerrero state, said in an interview with the daily newspaper *El Universal*. "We'll see if after this he would come to Guerrero to ask them for forgiveness."

José Antonio Meade Kuribreña, who represents a coalition led by the PRI in the presidential race, suggested that López Obrador's proposal would violate the principles of Mexico's judicial system, in effect preventing justice for victims of crime. Other partners in the coalition include the PVEM and the Partido Nueva Alianza (PANAL).

"This sense of insecurity is hurting our country, and that is why we must address this issue with serious proposals and not improvisations," Meade said during a campaign appearance in Nayarit state.

Former PAN president Ricardo Anaya, also a presidential contender, criticized both his rivals. "We have to address this problem with an intelligent strategy and with fewer bullets," said Anaya, who is representing the coalition *Por México al Frente*, an alliance forged by the PAN and two center-left parties, the Partido de la Revolución Democrática (PRD) and Movimiento Ciudadano (MC).

Anaya described López Obrador's suggestion as an "extremely old" idea that had already failed in other countries, including Colombia, where the government tried to negotiate with the infamous drug lord Pablo Escobar and ended up with a complete "disaster" as a result.

Public safety is expected to remain the top issue of the presidential election, scheduled for July 1.

In January, López Obrador offered a more comprehensive vision on how he would address crime in Mexico, particularly in rural areas where the drug cartels are thriving. He proposed the creation of more opportunities in order to reduce incentives for local residents to join criminal organizations.

Both the López Obrador and Meade campaigns suggested that ending corruption is an important step to address insecurity.

"We can't resolve the problem of lawlessness if we don't fix the corruption problem first, both in the federal government and particularly in the security forces," Alfonso Durazo, a key aide to López Obrador, told reporters.

Meade, for his part, promised to combat corruption if elected president. He alluded to Javier Duarte, the former Veracruz governor who is accused of embezzlement and collusion with criminal organizations in his state ([SourceMex, April 19, 2017](#)).

“We must be clear, we are very pained that Javier Duarte betrayed the people of his state with his corrupt acts,” Meade said in a message on Twitter. “As PRI members, we regret that the ex-governor has damaged the prestige of the party.”

Duarte is just one of many PRI elected officials accused of corruption during the past year alone ([SourceMex, July 19, 2017](#), and [Oct. 11, 2017](#)). In early January, Panama completed the extradition to Mexico of Roberto Borge, a former Quintana Roo governor, following his detention in the Central American country in June of 2017 ([SourceMex, June 21, 2017](#)).

While the PRI selected Meade as its representative because of his reputation as a clean politician ([SourceMex, Dec. 6, 2017](#)), his rivals believe this won’t be enough to persuade the population to vote for the governing party.

“It is not sufficient to have a smart and honest candidate to end the problem of corruption in our country,” Anaya told supporters.

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