

SSR ISSUE PAPERS

No. 3 — September 2011

Military Justice and Impunity in Mexico's Drug War

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ABOUT THE SSR ISSUE PAPERS

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SUMMARY

Mexican President Felipe Calderón's military deployment to combat the country's war on drugs has been strongly criticized by international human rights groups. During Calderón's administration, over 47,337 people have been killed and thousands of human rights complaints have been filed against the military. The Inter-American Court of Human Rights (IACtHR) has issued several binding rulings that obligate Mexico to strip the military of its jurisdiction to investigate and try soldiers accused of violating civilians' human rights. On July 12, 2011, Mexico's Supreme Court ruled that Congress must reform the Code of Military Justice so that human rights abuse cases always fall under civilian jurisdiction.

The Arce Initiative, brought forward by Senator René Arce from Mexico's opposition party, is the only proposed reform that complies with the IACtHR rulings and international human rights law. The Merida Initiative, a US aid package designed to assist in the fight against the war on drugs, places too much emphasis on the military and law enforcement, and needs to be revised. Civilian rule of law in Mexico can be strengthened by donor governments who are willing to help implement measures to increase transparency, combat corruption and rampant human rights abuses, and ease the transition to an accusatorial oral justice system.

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ACRONYMS AND ABBREVIATIONS

Centro Prodh	Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. (Miguel Agustín Pro Juárez Human Rights Center)
CNDH	Comisión Nacional de los Derechos Humanos (National Human Rights Commission)
Frayba	Centro de Derechos Humanos Fray Bartolomé de Las Casas (Human Rights Center Fray Bartolomé de Las Casas)
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
PGR	Procuraduría General de la República (Federal Attorney General's Office)
Red TDT	Red Nacional de Organismos Civiles de Derechos Humanos "Todos Los Derechos Para Todas y Todos" ("All Rights for Everyone" National Network of Civil Human Rights Organizations)
Sedena	Secretaría de la Defensa Nacional (National Defense Secretariat)
UN	United Nations
UN OHCHR	United Nations Office of the High Commissioner on Human Rights
WOLA	Washington Office on Latin America

INTRODUCTION

When Felipe Calderón assumed Mexico's presidency in late 2006, following an election marred by allegations of voter fraud, one of his first actions was to deploy the country's military to combat drug trafficking organizations. Four years later, Mexico's military maintains a monthly average of 48,750 soldiers in the field, fighting the war on drugs (Secretaría de la Defensa Nacional [Sedena], 2009: 104).¹ In some regions, soldiers have taken over policing duties from local and state police when the police have been deemed unable or too corrupt to continue their law enforcement duties.

Human rights organizations are critical of the military's participation in law enforcement duties, and the increasingly common practice of appointing military officials to run police departments. They argue that using the military to carry out law enforcement duties violates Article 129 of the Mexican Constitution, which strictly limits the military's duties in times of peace (Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. [Centro Prodh], 2009: 11). The practical consequences of the troops' deployment are of particular concern to human rights organizations: during Calderón's administration, over 47,337 people — the overwhelming majority of them civilians² — have been killed in the war on drugs (McKay, 2011). Human rights abuse complaints filed with the Comisión Nacional de los Derechos Humanos (CNDH) against the government have increased by 26 percent since Calderón took office. The military is largely responsible for this increase. Human rights abuse complaints filed against the

1 This figure comes from Sedena's annual report for 2009, the last year for which it provided deployment numbers.

2 Here, "civilians" includes members of organized crime who do not work for the government.

military rose from 182 in 2006 to 1,415 in 2010.³ By May 26, 2011, the number of human rights complaints filed by civilians against military personnel during Calderón's administration had reached 5,055 (Sedena, 2011: 3). By all measures, Mexico's level of security has decreased, not increased, since Calderón deployed the first soldiers in December 2006.

Maureen Meyer of the Washington Office on Latin America (WOLA) argues that human rights abuses were a foreseeable consequence of the deployment: "Military forces are trained for combat situations, in which force is used to vanquish an enemy without regard for the enemy's wellbeing. In contrast, domestic law enforcement authorities are trained to interact with civilians within at least a minimal framework of Constitutional rights. The difference in roles and tactics means that conflict and abuses are virtually inevitable when the military is brought into a law enforcement role" (Meyer, 2010: 9).

The military has punished only one soldier who committed an abuse during the Calderón administration: a soldier who shot and killed a civilian who failed to stop at a military checkpoint was sentenced to nine months in prison (Vivanco, 2009). The dramatic rise in human rights abuses and the military's failure to punish the soldiers responsible for these abuses has led to unprecedented pressure to reform what Mexican law refers to as *fuero militar* (military jurisdiction). Under military jurisdiction, the military assumes jurisdiction over all crimes committed by active-duty soldiers.

Human rights organizations, the IACtHR and the United Nations (UN) have all argued that the practice of allowing the military to investigate, try and discipline all alleged crimes committed by active-duty soldiers

³ The number of human rights abuse complaints are reported in the CNDH's annual reports, available at: www.cndh.org.mx/lacndh/informes/informes2.htm. The statistics cited above refer only to complaints filed against the Ministry of National Defense; they do not include complaints filed against the navy.

promotes impunity and should be abolished. Four recent IACtHR rulings, all issued since November 2009, order Mexico to reform military jurisdiction so that crimes against civilians are investigated and tried in the civilian court system. Mexico is legally obligated to comply with the ruling and finds itself forced to significantly reform military jurisdiction for the first time in 70 years.

A BRIEF OVERVIEW OF MILITARY JURISDICTION

Article 13 of Mexico's Constitution establishes military jurisdiction for "crimes against and failure to abide by military discipline." The Code of Military Justice is a federal law that interprets the Constitution's articles regarding military justice and discipline. According to the Red Nacional de Organismos Civiles de Derechos Humanos "Todos Los Derechos Para Todas y Todos" (Red TDT), Article 57.11 of the Code of Military Justice "defines 'military discipline' in an unconstitutionally broad manner⁴ so that it includes, amongst other questions, all of the crimes committed by members of the military 'in active service or in connection with acts of service'" (Red TDT, 2010: 10). In this way, the military assumes jurisdiction over nearly all crimes committed by active-duty soldiers.

Human rights organizations and intra-governmental institutions argue that the military justice system's hierarchical military structure promotes impunity for crimes committed by military personnel against civilians.

⁴ Dr. Manuel González Oropeza, a constitutional expert with the National Autonomous University of Mexico's Legal Research Institute and a judge appointed to Mexico's Federal Electoral Tribunal, argues that Article 13 of Mexico's Constitution has been "poorly interpreted" to give military tribunals jurisdiction over all crimes committed by active-duty soldiers. "In my opinion, the Constitution restricts military jurisdiction to try cases of failure to abide by military discipline," writes González. "I don't believe that any crime that falls under ordinary [civilian] law becomes military just because it was committed by a member of the armed forces...The military crimes subject to this specialized jurisdiction can only be those that soldiers exercising strictly military functions can commit" (González Oropeza, 2006: 187).

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The military court system is structured in such a manner that judges and prosecutors are under pressure to make decisions that are favourable to the Defense Ministry. The Code of Military Justice establishes that all public defenders, military prosecutors and judges be active-duty military personnel who are appointed by and accountable to the secretary of defense. The secretary has the power to close investigations and issue pardons in the event of a conviction. Furthermore, the Code of Military Justice treats military prosecutors, defenders and judges the same as all members of the military; as such, the secretary of defense can remove them from their positions without cause at any point in time as he sees fit. "Under these circumstances," argues Human Rights Watch (HRW), "military judges work knowing they might be removed if they issue decisions or rulings that the Secretary of Defense dislikes" (HRW, 2009: 18).

Unlike other federal laws, Congress never approved the Code of Military Justice. President Abelardo L. Rodríguez decreed the Code of Military Justice in 1933. Rodríguez was never elected by popular vote; he was an

army general who was appointed president by Congress in 1932. After appointing him, Congress gave him unprecedented powers to decree the Code of Military Justice and other laws related to the military.

Until recently, Mexico's civilian institutions demonstrated unwavering support for military jurisdiction. When complaints against soldiers are filed with civilian prosecutors, those prosecutors prefer to turn the cases over to military prosecutors — as the law dictates — rather than fight for jurisdiction. According to an investigation by Centro Prodh, from December 2006 to June 2010, federal and local public prosecutors decided that the military should investigate itself in 1,661 cases where soldiers allegedly committed crimes against civilians (Red TDT, 2010: 9–10). According to Yessica de Lamadrid Téllez, the director of international cooperation for the Procuraduría General de la República (PGR), the PGR "automatically" sends all cases in which an active-duty member of the military is accused of committing a crime to the Military Attorney General's Office (HRW, 2009: 15).

In the few instances where cases against soldiers have reached federal courts, judges have thrown out the cases or sent them back to military courts.⁵ Most cases, however, do not reach civilian courts. If a military trial ends in an acquittal, trying the soldier again in civilian court would constitute double jeopardy, which Mexican law prohibits. Victims do not have the right to appeal acquittals, in either civilian or military courts.⁶

5 Federal courts threw out the following cases: the forcible disappearance of Rosendo Radilla Pacheco in Guerrero in 1974; two separate incidents in which two indigenous women, Inés Fernández Orterga and Valentina Rosendo Cantú, were raped by soldiers in Guerrero in 2002; and the killing of four civilians and the arbitrary detention of four others in Santiago de Caballeros, Sinaloa, in 2008 (see HRW, 2009). In the first three cases, the victims sought relief in the IACtHR and won. The fourth case went to the Supreme Court, which refused to hear the case on technical grounds, following heavy pressure from the executive branch and the National Defense Ministry (see Avilés, 2009).

6 As dictated by Article 10 of Mexico's *Amparo* (Injunction) Law.

INTERNATIONAL PRESSURE TO REFORM MILITARY JURISDICTION

The Mexican military's jurisdiction over crimes committed by soldiers against civilians is completely out of line with international standards, which dictate that civilian courts must investigate and try soldiers accused of crimes against civilians.

For years, the UN has pressured Mexico to reform military jurisdiction so that military courts do not investigate and try cases when civilians are among the victims of military personnel.⁷ The UN Office of the High Commissioner on Human Rights (UN OHCHR) went so far as to recommend that Mexico amend its Constitution to include civilian victims' right to access civilian courts in military abuse cases.

The Inter-American Commission on Human Rights (IACHR) has argued that military jurisdiction leads to "de facto impunity which 'has a corrosive effect on the rule of law and violates the principles of the American Convention [on Human Rights].'"⁸

The US government, which provides financial and logistical support for Mexico's drug war through an aid

package known as the Merida Initiative,⁹ has delivered relatively subdued criticism of the Mexican military justice system's lack of transparency and prosecutions. The US State Department, in a Merida Initiative human rights report that was not widely distributed, noted that the military prosecutor only investigated a total of five human rights cases in 2008 and 2009 (US Department of State, 2010: 2). Over that same period of time, the Mexican government's CNDH received 3,021 formal human rights complaints against the military.¹⁰ The State Department report lamented, "The limited information on military prosecutions and complaints filed suggests that actual prosecutions are rare" (US Department of State, 2010: 2).

Concern about Mexico's human rights record prompted the US Congress to attach four conditions to 15 percent of the Merida Initiative's aid to the Mexican military and police.¹¹ One of the conditions requires that the Mexican government "ensure that civilian prosecutors and judicial authorities are investigating and prosecuting, in accordance with Mexican and international law, members of the Federal police and military forces who have been credibly alleged to have violated internationally recognized human rights" (US Department of State, 2009).

In Mexico, the conditions are very unpopular among military officials and some lawmakers, who believe the United States is infringing on Mexican sovereignty. Following both governments' approval of the Merida

7 The following UN entities and officials have called upon Mexico to change its laws so that all alleged military crimes against civilians are investigated and tried in civilian courts: the Special Rapporteur on the Independence of Judges and Lawyers (E/CN.4/2002/72/Add.1, pg. 44); Special Rapporteur on Torture (E/CN.4/1998/38/Add.2, par. 88[j]); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (E/CN.4/2000/3/Add.3, par. 107[f]); Special Rapporteur on Violence Against Women (E/CN.4/2006/61/Add.4, par. 69[a] [vi]); and the Committee Against Torture (A/62/44, pg. 26).

8 *Ana, Beatriz, and Celia González Pérez v. Mexico*, Case 11.565, Report No. 53/01, para. 81 (IACHR 2000). The González Pérez sisters are three indigenous women who were gang-raped and tortured by soldiers in Chiapas, Mexico, in 1994, in order to force them to confess that they were members of a guerrilla army.

9 The US Congress approved the Merida Initiative aid package in 2008 to help Mexico fight its war on drugs. So far, the US government has provided the Mexican government with US\$1.5 billion in equipment, training, and armament through the initiative. US funding of the military's role in the drug war has been one of the more troubling aspects of the Merida Initiative. President Barack Obama has vowed to extend the initiative past its 2010 expiration date.

10 The number of human rights abuse complaints by government agency are reported in the CNDH's annual reports, available at: www.cndh.org.mx/lacndh/informes/informes2.htm.

11 The remaining 85 percent of aid is unconditional and will be delivered regardless of whether Mexico's human rights record improves or deteriorates even further.

Initiative, Mexico's secretary of defense publicly stated his commitment to leave military jurisdiction unchanged (Bricker, 2009). He lobbied Mexico's Congress to cancel the Merida Initiative on the grounds that US meddling in Mexican intelligence and military structures was not worth the small amount of aid that Mexico receives through the aid package (Guerrero, 2010).

Following years of ignoring the international community's criticism of military jurisdiction, Mexico now finds itself legally obligated to change the Code of Military Justice. Three recent IACtHR rulings order Mexico to reform the Code of Military Justice's Article 57 to make it compatible with the American Convention on Human Rights. On November 29, 2009, in *Radilla Pacheco v. Mexico*,¹² the court ruled that "if the criminal acts committed by a person who enjoys the classification of active soldier does not affect the juridical rights of the military sphere, ordinary courts should always prosecute said person. In this sense, regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance."¹³ The court reiterated that ruling on August 30 and 31, 2010, in the cases *Fernández Ortega et al. v. Mexico* and *Rosendo Cantú et al. v. Mexico*,¹⁴ and again on November 26, 2010, in the case of *Cabrera García and Montiel Flores v. Mexico*.¹⁵

Mexico is a signatory to the American Convention and has accepted the IACtHR's optional jurisdiction. As

12 Soldiers kidnapped and subsequently enforced the disappearance of activist Rosendo Radilla Pacheco in Guerrero state on August 25, 1974. Those responsible were never brought to justice because military courts investigated the case.

13 *Radilla Pacheco v. Mexico*, Case 12.511, para. 274 (IACtHR 2009).

14 Two indigenous women, Inés Fernández Ortega and Valentina Rosendo Cantú, were gang-raped by soldiers in two separate incidents in Guerrero state in 2002. The crime went unpunished because military courts investigated the case.

15 Soldiers arbitrarily detained and tortured environmental leaders Rodolfo Montiel Flores and Teodoro Cabrera García in Guerrero state in 1999.

such, it is legally obligated to harmonize its laws with the American Convention and to comply with the court's rulings.¹⁶ This means that, for the first time in decades, Mexico finds itself forced to reform military jurisdiction.

THE HISTORIC SUPREME COURT DECISION

Up until recently, Mexico's three branches of government — judicial, executive and legislative — unwaveringly supported military jurisdiction. However, institutional support for military jurisdiction cracked on July 12, 2011, when the Supreme Court ruled that Article 57 of the Code of Military Justice is unconstitutional.¹⁷ The ruling is an about-face from the court's previous stance on the issue.¹⁸

The Supreme Court based its ruling on the Constitution's newly reformed Article 1,¹⁹ which obligates Mexico to comply with human rights law established in international treaties, and Article 13, which states that "when a civilian is involved in a crime or failure to abide by military discipline, the case will be sent to the appropriate civilian authority."

In its deliberations, the Supreme Court considered three key questions:

- Are Mexico's judges obligated to uphold international human rights law as outlined in Article 1 of the

16 Interview with Stephanie Brewer, international legal officer for Centro Prodh.

17 The Supreme Court has not yet published the majority opinion, but it did publish transcripts of its deliberations and votes, available at: www.scjn.gob.mx/2010/pleno/Documents/Taquiograficas/2011/Julio/pl20110712v2.pdf.

18 Mexico's Supreme Court upheld military jurisdiction in 2005 when it confirmed the Code of Military Justice's broad interpretation of "military discipline" to include all active-duty soldiers, even if the crime is not committed in the line of duty. In case number 148/2005, the court ruled in order to define a crime as a crime against military discipline, "it is sufficient that the subject that carries out [the crime] be an active-duty military official or soldier."

19 Reformed on June 10, 2011.

Constitution, and are they therefore obligated to uphold the *Radilla Pacheco v. Mexico* ruling?

- Should Mexico's judges be obligated to apply the IACtHR's ruling in *Radilla Pacheco* and send all human rights abuse accusations against soldiers to the civilian court system?
- Should the Supreme Court resolve disputes between civilian and military courts over jurisdiction, should such conflicts arise?

The court voted "yes" on all questions, meaning that Mexico's judges are now required to send all cases of alleged human rights abuses committed by soldiers against civilians to the civilian justice system. However, the ruling will only apply to future cases. Victims whose cases are currently in the system must file injunctions to get their cases moved from military to civilian jurisdiction (Carrasco Araizaga and Díaz, 2011: 22).

The ruling is a stopgap measure until Congress reforms the Code of Military Justice so that it conforms with the Constitution. Only then will Mexico be in full compliance with the IACtHR's ruling in regard to military jurisdiction.

LEGISLATING A RESTRICTED MILITARY JURISDICTION

On October 19, 2010, President Calderón sent a bill to Congress that, if enacted, would have put forced disappearance, torture and rape committed by soldiers against civilians under federal, not military, jurisdiction. Under the president's plan, all other crimes committed by soldiers, including other human rights abuses, would have remained under military jurisdiction. Moreover, the office of the military public prosecutor would still carry out an initial investigation to determine the charges,

allowing it to decide if the cases stay in military courts or go to the civilian system.

On May 19, 2011, the IACtHR issued an evaluation of Mexico's compliance with the *Radilla Pacheco* ruling. The court declared Calderón's reform to be "insufficient" and stated that it "does not comply" with the ruling. Specifically, it stated that a satisfactory reform would limit military jurisdiction to crimes "that, due to their very nature, are against laws and regulations that are unique to the military order." The court also reiterated that the military prosecutor's office cannot investigate human rights abuses (IACtHR, 2011: para. 21-22).

Moreover, the IACtHR used its November 26, 2010 *Cabrera García and Montiel Flores v. Mexico* ruling to elaborate on its criticism of Calderón's attempt to leave the initial investigation of crimes committed by soldiers in the military public prosecutor's hands: "the American Convention's incompatibility with military jurisdiction's intervention in these types of cases doesn't only refer to the act of trying [a case] in a tribunal, rather, [it] fundamentally [refers] to the very investigation, given that its action constitutes the beginning and the presumption necessary for the subsequent intervention of an inappropriate tribunal" (IACtHR, 2010).

In this sense, the court rejects the president's attempt to give the military public prosecutor the power to initiate an investigation into alleged human rights abuses and to determine whether or not the case should be sent to civilian jurisdiction.

Due to overwhelming rejection of Calderón's proposal from civil society, the UN, the IACtHR and Mexican opposition parties, the bill stalled in Congress. The Supreme Court's historic July 12 decision appears to have effectively annulled the president's proposal, although the court did not specifically mention Calderón's bill in its deliberations.

After Calderón sent his proposal to Congress, Senator René Arce from the opposition Democratic Revolution Party introduced his bill to reform military jurisdiction.²⁰ Unlike Calderón's initiative, Arce's proposal has received Mexican human rights organizations' endorsement. According to Stephanie Brewer, international legal officer for the Mexico City-based Centro Prodh, "The Arce proposal is a modification that would comply with the rulings of the Inter-American Court of Human Rights and that would bring Mexico into compliance with international law, and — as we have argued — with Mexico's own Constitution by taking all human rights cases out of military jurisdiction." Brewer adds, "This is something that is not done by Calderón's proposal."²¹

The Arce proposal modifies the Code of Military Justice's Article 57 to include the following text: "In incidents that violate human rights or in which civilians are amongst the victims, under no circumstance can military jurisdiction apply. The relevant civilian authorities must handle the case." This section fully complies with the recent IACtHR rulings, which state: "regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance" (IACtHR, 2011). Arce's wording effectively rules out any loopholes that might exclude some human rights crimes from civilian jurisdiction. It also assures that some of the most common crimes committed by soldiers against civilians — such as robbery and warrantless searches, which might not be classified as human rights violations per se — must be investigated by civilian authorities.

The Arce bill is stalled in committee.

20 The full text of Arce's initiative is available at: www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=5834&lg=61.

21 Interview with Stephanie Brewer, international legal officer for the Centro Prodh, November 18, 2010.

THE NATIONAL SECURITY LAW

Mexico's Congress is currently debating an extremely controversial new law, the National Security Law. The law seeks to legalize the military's presence on the streets and its participation in policing tasks. The bill passed both houses, and now the Senate and Chamber of Deputies must reconcile the two versions.

The Chamber of Deputies decided, on recommendation from the Chamber of Deputies Human Rights Commission, to clarify the National Security Law's language regarding jurisdiction when soldiers commit crimes (Mercado and Navarro, 2011). The Deputies' proposed language states: "In the Armed Forces' auxiliary tasks — to which this section refers — their members' conduct that could constitute a crime which affects civilians will be prosecuted and punished by ordinary [civilian] courts" (Cámara de Diputados, 2011:41).

The problem with the Deputies' added language, says Centro Prodh's²² Stephanie Brewer, is that the section of the National Security Law cited above "is limited to joint operations²³ by the armed forces and crimes against civilians. Military jurisdiction should not apply to any human rights violation, whether in joint operations or no...and whether the victim is civilian or military. So this reform would be incomplete." Brewer argues that Mexico will only be in compliance with the IACtHR's rulings when it reforms Article 57 of the Code of Military Justice.²⁴

22 Centro Prodh was on the team of attorneys who successfully argued the *Cabrera García and Montiel Flores* and *Rosendo Cantú et al.* cases in the IACtHR.

23 "Joint operations" are operations in which soldiers and federal and/or state and/or local police participate. They are very common — although not exclusive to — the drug war.

24 Interview with Stephanie Brewer, International Legal Officer for Centro Prodh, September 2, 2011.

CONCLUSION

International human rights law is very clear: military jurisdiction cannot apply when soldiers allegedly commit human rights abuses against civilians. Therefore, the Code of Military Justice, which expands the scope of military discipline to include any crime committed by members of the military “in active service or in connection with acts of service,” must be reformed. Reforming Article 57 of the Code of Military Justice is the only way Mexico will comply with the IACtHR’s rulings.

While justice is notoriously difficult to come by in Mexico’s civilian justice system,²⁵ civilian authorities — not the military — must investigate and try alleged human rights abuses against civilians. Thirteen of Mexico’s most respected human rights organizations — many of whom have tried human rights abuse cases against the military both in Mexico and in international courts — have identified military jurisdiction as “one of the chief obstacles that makes access to justice impossible for victims of military abuses” (Centro de Derechos Humanos Fray Bartolomé de Las Casas [Frayba] et al., 2010). Reforming military jurisdiction is not a panacea for human rights abuses and impunity, but it is a necessary step.

President Calderón’s proposed reform to the Code of Military Justice is insufficient and will do little, if anything, to reduce or end impunity for human rights crimes committed by soldiers against civilians. The IACtHR has made it very clear that Calderón’s reform is not sufficient to comply with the court’s rulings. Moreover, in an October 19, 2010 press release, the UN OHCHR in Mexico criticized Calderón’s proposal for its “very limited list” of crimes that would be excluded from military jurisdiction. The UN OHCHR called upon Congress to pass a reform that genuinely complies with the rulings.

25 The documentary *Presunto Culpable (Presumed Guilty)* in English provides a strong critique of Mexico’s civilian justice system.

Senator René Arce’s initiative is the only proposed reform to military jurisdiction that fully complies with the IACtHR rulings and international human rights law. Mexico’s Congress should pass the Arce initiative, which enjoys the support of Mexican human rights organizations.

While passing and implementing the Arce initiative is a necessary step to combatting impunity in the armed forces, Mexico must also address the root causes of skyrocketing human rights abuses committed by the military. Soldiers are not trained to interact with civilians, nor are they trained to carry out investigations or other duties that legally correspond to the police. The Mexican government should develop a specific timeline for returning the military to its barracks as soon as possible.

As the Mexican military’s biggest foreign funder, the US government has a special responsibility to ensure that its aid is not being used to commit or support human rights abuses. While the Merida Initiative represents a tiny fraction of Mexico’s overall drug war expenditures, the United States’ moral authority as the biggest importer of Mexican goods and the only donor to the country’s military cannot be understated. In a letter to the US Congress,²⁶ Mexican human rights organizations argued that “a change of paradigm is needed in order to combat the factors that cause drug trafficking and violence; instead of only combating their symptoms.” They specifically requested that “the US Congress and Department of State, in both the Merida Initiative as in other programs to support public security in Mexico, does not allocate funds or direct programs to the armed forces.”

The United States should heed these calls from Mexican human rights organizations, who have thoroughly documented the spiralling violence that has accompanied the military’s deployment in the war on drugs. The United States should cut all funding for Mexico’s military,

26 Letter available at: www.wola.org/media/Congress_NGOLETTER_MilitaryAid_Mexico_inglesFINAL%281%29.pdf.

not only because of its dismal human rights record, but also because the military should not carry out domestic law enforcement duties that legally correspond to police and intelligence agencies.

Moreover, the US Congress and executive branch should completely revise the Merida Initiative, which places too much emphasis on the military and law enforcement. No donor government should train or fund the Mexican military for its role in domestic law enforcement. Nor should they fund militarized police or train police in military tactics (Withers, Santos and Isacson, 2010: 27). Instead, the international community should focus on peaceful aid to Mexico, particularly aid that supports drug abuse prevention, job creation, social programs and solutions to address the negative consequences of drug trafficking and abuse.²⁷

Donor governments should also focus on strengthening civilian rule of law in Mexico. This includes helping Mexico implement measures to increase transparency, combat corruption and rampant human rights abuses committed by its police forces, and transition from its inquisitorial written justice system to an accusatorial oral justice system. In this way, donor governments can help Mexico combat the impunity that prevails in its civilian judicial system and raise its dismal conviction rate, which currently stands at 1.5 percent (Agencia EFE, 2010).

Finally, international pressure played a key role in convincing Mexico's Supreme Court to finally strike down military jurisdiction. The UN and the IACHR should keep up their pressure on the Mexican government until Congress sufficiently reforms Article 57 of the Code of Military Justice to ensure that all human rights violations are tried in civilian courts.

²⁷ Ibid.

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