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Senate of the Republic,
Av. Paseo de la Reforma 135,
Colonia Tabacalera,
Delegación Cuauhtémoc,
C.P. 06030,
Mexico D.F.

23 April 2012

Dear members of the Senate of the Republic of Mexico,

Amnesty International is writing to you, with the utmost respect, as members of the Senate of the Republic of the United Mexican States, to urge you to adopt a reform to the Military Criminal Code that has been introduced to comply with judgments handed down by the Inter-American Court of Human Rights (IACtHR).

Adopting this reform would be a crucial step towards ensuring access to an effective remedy for all victims of human rights violations allegedly committed by members of the armed forces.

The organization considers the adoption of the draft of the law by the joint Commissions on Justice, Governance and Legislative Studies on 19 April to constitute important progress. The plenary must now take this historic opportunity to ensure the implementation of a reform that complies with the obligations established by the IACtHR and Mexico's Supreme Court.

The substantive progress made in the adoption of the draft law last week is that the law makes it clear that offences allegedly committed by members of the armed forces against civilians as well as human rights violations fall within the jurisdiction of civil and not military courts.

It is important that military victims of human rights violations enjoy equal protection, and that no human rights violation committed by a member of the armed forces remains outside the jurisdiction of the civil courts.

The civil justice system is the best guarantee for providing alleged victims of abuses with impartial, independent and transparent justice. The draft of the law put forward by the Commissions stipulates that the civilian judiciary, and in particular the Supreme Court, should settle any conflicts of jurisdiction between the two systems. It also stipulates that victims have the right to challenge all decisions concerning jurisdiction. These are important moves towards ensuring fundamental rights and complying with the IACtHR rulings.

However, Amnesty International believes that the Senate needs to strengthen at least two aspects of the report.

First, it needs to ensure that initial investigations of alleged human rights violations or offences against civilians are carried out by the competent civilian authorities, and not by the military police or the military prosecutor's office. At the moment, the wording of Article 49 Bis of the report is ambiguous, and could allow the military police and the military prosecutor's office to carry on being responsible for initial investigations.

The first stage of any investigation is crucial for ensuring impartiality and for avoiding any kind of conflict of interests as well as for ensuring its eventual success. Amnesty International, as well as several national and international human rights organizations, including the National Human Rights Commission, has documented cases in which the military authorities involved in the preliminary investigation have tampered with the crime scene, intimidated witnesses and falsified evidence in order to obstruct investigations. In many cases, such actions have resulted in impunity or in classifying crimes as less serious offences.

It is therefore essential that the reform explicitly stipulate that the responsibility for initial investigation of the facts should lay strictly with the civilian authorities, and that the military authorities should inform the civilian authorities immediately whenever they receive news of a possible abuse. The reform must also stipulate that the military authorities refrain from conducting military investigations and that they cooperate fully with the civilian authorities in cases of human rights violations, regardless of who the victim may be, and offences against civilians.

The reform should not establish “special” procedures for such cases within the civil justice system. The draft of the law that was put forward still contains an ambiguous expression that requires criminal judges and unitary circuit judges (*magistrados unitarios de circuito*) “to know the legal framework that governs the Armed Forces”. Once the civilian justice system is taking action on a case, the military legal framework ceases to be relevant and we therefore believe that this article could leave the door open to the establishment of special judges at a later date, which could undermine the reform and the impartiality with which justice is applied.

Amnesty International urges you to ensure that the explanatory statement accompanying the reform does not allow a special procedure or system for dealing with such cases to be established, so that everyone has equal access to impartial and independent justice.

The few days that remain of this legislative session provide an opportunity for the Senate to adopt an historic reform of the Military Criminal Code that expressly addresses the needs pointed out by the IACtHR, the Supreme Court, victims of human rights violations, national and international human rights organizations and a growing number of other voices from within Mexican society.

This is a reform that is long overdue. As members of the Mexican Senate, you have a responsibility and an opportunity to make a substantial improvement to the system for obtaining and administering justice in the context of the violence that is currently affecting the country.

Yours sincerely,

Javier Zúñiga Mejía Borja
Special Advisor, Regional Programmes