

MEXICO
Memorandum to the
Government of Mexico and
the Congress of the Union:

REFORMS TO RESPECT AND ENSURE
INTERNATIONAL HUMAN RIGHTS LAW AND
RESTRICT MILITARY JURISDICTION

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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MEXICO

Memorandum to the Government of Mexico and the Congress of the Union: Reforms to respect and ensure international human rights law and restrict military jurisdiction

Amnesty International is addressing this memorandum to the Government of Mexico and both chambers of the Mexican Congress to call for Mexico's domestic legislation to be brought into line with its international legal obligations.

The new LXI legislature of the Congress of the Union faces a number of crucial decisions with regard to legislative proposals. Amnesty International believes that two of the most important issues on the legislative agenda are:

- Constitutional reforms to clearly recognise in domestic law the obligation to respect and ensure the human rights enshrined in the treaties ratified by Mexico
- Reform of the Code of Military Justice in order to end the application of military jurisdiction in human rights cases in accordance with the November 2009 judgement of the Inter-American Court of Human Rights (IACtHR) on the case of *Radilla-Pacheco v. Mexico*.

These two reforms provide a crucial opportunity for the executive and legislature to strengthen the development of Mexican institutions by ensuring that the commitments Mexico has made to respect and ensure rights via treaty ratifications are given effect in domestic law. The development of international human rights law since the Universal Declaration of Human Rights in 1948 has been premised on the incorporation of these standards into the domestic legal framework to strengthen their effective application for each individual person.

Mexico is a State Party to all major human rights conventions. In recent years, one of the main features of the human rights policy of Mexican governments has been a commitment to harmonise domestic law with the requirements of international human rights treaties. So far this has only been partially realised.

The Government of Mexico has also played a major role on the international stage fostering the development of international human rights protection mechanisms and conventional law. The harmonization of domestic law is also an integral requirement of the international human rights treaties themselves which require that State parties act in good faith to give effect to their provisions.

One of the key obstacles to the effective application of human rights standards in Mexico is the failure of the Constitution to clearly and definitively recognise the obligation to comply with these treaties. The continuing resistance of some federal, state and municipal authorities to recognise that international human rights law enjoys constitutional status undermines its application throughout Mexico.

Amnesty International is aware that the Human Rights Reform bill (*Reforma*

constitucional en material de los derechos humanos) which did not obtain final approval in the Chamber of Deputies in the last legislative session is once again under discussion. Amnesty International believes that the bill provides the most important opportunity available to clearly incorporate international human rights obligations into the domestic legal framework and expressly grant international human rights treaties constitutional status from Article 1 of the Constitution. The organization strongly urges the Chamber of Deputies to resolve swiftly other issues contained in the bill which prevented agreement previously and ensure the approval of reforms which clearly establish international treaty obligations as enforceable rights in the Constitution. If the bill is modified in deliberations before either Chamber, Amnesty International calls on both Chamber to ensure that this same principle is upheld on final approval.

Another key issue facing the executive, legislature and judiciary is the role of military jurisdiction in the investigation, trial and punishment of military officials implicated in human rights violations.

In December 2009, Amnesty International issued a report: “New reports of human rights violations by the military” which documented illustrative cases of extrajudicial killing, enforced disappearance, torture and arbitrary detention by members of the Mexican Armed Forces engaged in law enforcement duties.¹ The report demonstrated the obstacles that military jurisdiction poses for victims and relatives to file complaints and pursue justice. It also showed how civilian authorities routinely transfer cases directly to military authorities without even registering them adequately. The report highlighted the lack of transparency of the military justice system which prevents not only victims and relatives from obtaining information about their cases, but left Mexican society with only the most rudimentary data on allegations of abuses and steps taken to properly investigate. The recent information published on the website of the Ministry of Defence has not changed this situation.²

New cases which have occurred since Amnesty International’s report demonstrate that this pattern of abuses and lack of effective accountability continues. On 29 December 2009 José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza and Rocío Irene Alvarado Reyes were arrested by members of the military in Buenaventura, Chihuahua state. Despite compelling evidence of the involvement of military personnel in their enforced disappearance, the whereabouts of the three remains unknown and military authorities continue to deny involvement. On 19

¹ New reports of Human Rights Violations by the military, AI index AMR 41/058/2009, December 2009

² The Ministry of Defence acknowledge more than 4,000 complaints filed with the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) during the administration of President Calderón resulting in the conviction of only seven officials for unspecified offences (six of which apparently relate to crimes committed prior to the present administration) <http://www.sedena.gob.mx/index.php/quejas-y-recomendaciones>,

March 2010 Javier Francisco Arredondo and Jorge Antonio Mercado Alonso, two students at the private university in Monterrey, *Instituto Tecnológico de Estudios Superiores de Monterrey* (ITESM), were killed when the military opened fire on suspected members of a criminal gang. On 3 April, five year-old Bryan and his nine year-old brother, Martín Almanza, were shot and killed in an apparently unprovoked attack by members of the army as they travelled by car with their family in Tamaulipas state. In the last two cases military and civilian authorities denied military responsibility, but the recommendations issued by the CNDH show that crime scenes were altered by military officials and official investigations sought to divert attention toward criminal gangs.³ Despite civilian and military authorities formally accepting the CNDH recommendations, there is no clear change in the role of military prosecutors or the manner in which both cases are being investigated. Similar CNDH recommendations in the past have often failed to ensure a full, impartial and independent investigation and access to justice and reparations for the victims.

The role of the military in law enforcement duties has come under close scrutiny during the present administration as reports of human rights abuses have increased with the wide scale deployment of military forces. It is vital that all security forces, whether civilian or military, are adequately trained and equipped and subject to civilian supervision and are accountable for human rights violations. The Government has frequently reiterated its commitment to protect human rights while combating organized crime. Nevertheless, the evidence from these and other cases show that the wide scope of military jurisdiction is a major barrier to justice. As a result, not only are victims and their relatives denied fundamental rights to justice, truth and reparations, but the failure to apply adequate supervision, accountability and transparency to the conduct of the Armed Forces prevents protection of human rights and allows impunity to flourish.

The Inter-American Court of Human Rights (IACtHR) confirmed in its December 2009 judgement in the case of *Radilla-Pacheco v. Mexico* that Mexican authorities are obligated to end the wide application of military jurisdiction in cases such as those described above.⁴ In its judgement, the International Court ordered Mexico to take specific measures to provide remedy and reparations for the violations committed as a result of the enforced disappearance of Rosendo Radilla in 1974.

Point 10 of the Operative Paragraphs of the judgement requires Mexico to implement legislative reforms to ensure that article 57 of the Code of Military Justice is compatible with international human rights standards and the terms of the judgement. Point 11 of the judgement requires the reform of article 215 of the Federal Criminal Code to ensure its compatibility with international standards on enforced disappearance of persons. Point 12 requires the provision of ‘permanent

³ CNDH recommendations 36/2010 and 45/2010

⁴ American Convention on Human Rights, Article 68.1, “The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties”

courses,' funded by the State, that cover 'the analysis of the jurisprudence of the Inter-American Human Rights Protection System in reference to the limits of military criminal jurisdiction, as well as a training program on the correct investigation and prosecution of facts that constitute the forced disappearance of persons'⁵

In December 2009 the Government of Mexico explicitly recognised its obligation to comply with the judgement and made a clear commitment to do so:

*"En cumplimiento con el artículo 67 de la Convención Americana sobre Derechos Humanos, de la cual México es parte desde 1981, el fallo de la Corte Interamericana de Derechos Humanos es definitivo e inapelable. Asimismo, en virtud del compromiso adquirido por el Estado mexicano en diciembre de 1998, al ratificar la competencia contenciosa de ese Tribunal, es su obligación internacional cumplir con la sentencia. Por tanto, el gobierno de México llevará a cabo todas las acciones necesarias para ejecutar la sentencia de ese órgano jurisdiccional."*⁶

The Government has publicly committed itself to submit a bill to Congress during the present legislature to implement the reforms required by the judgement.⁷ A draft bill has not as yet been presented to Congress. Amnesty International urges the Government to make public the proposed bill in order to enable effective scrutiny of the legislative process and compliance with IACtHR sentence.

At present the federal judiciary has interpreted Article 13 of the Constitution to grant exclusive authority to military jurisdiction over offences against military discipline, whether or not the victim is civilian.⁸ In turn Article 57 of the Code of Military Justice defines offences against military discipline as including ordinary or federal crimes committed by military officials on active service.⁹

*Artículo 57: "Son delitos contra la disciplina militar:
I.- Los especificados en el Libro Segundo de este Código;
II.- Los del orden común o federal, cuando en su*

⁵ *Radilla-Pacheco vs Mexico, Judgment of November 23, 2009, XII, Operative Paragraphs*

⁶ Statement by Ministry of Interior, Comunicado 286, 15 December 2009,

<http://www.presidencia.gob.mx/prensa/segob/?contenido=51501>

⁷ <http://www.eluniversal.com.mx/primer/34807.html>

⁸ Article 13, Mexican Constitution, "Subsiste el fuero de guerra para los delitos y faltas contra la disciplina militar; pero los tribunales militares en ningún caso y por ningún motivo podrán extender su jurisdicción sobre personas que no pertenezcan al Ejército"

⁹ *Radilla-Pacheco vs Mexico*, para. 271

*comisión haya concurrido cualquiera de las circunstancias que en seguida se expresan:
a).- Que fueren cometidos por militares en los momentos de estar en servicio o con motivo de actos del mismo;”¹⁰*

The IACtHR judgement requires Mexico to “adopt, within a reasonable period of time, the appropriate legislative reforms in order to make [article 57] compatible with the international standards of the field and the [American Convention]”¹¹

These legislative reforms shall include the following elements:

- a) The application of “military criminal jurisdiction shall have a restrictive and exceptional scope”;
- b) That “only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offenses that based on their own nature threaten the juridical rights of the military order”;
- c) That “taking into account the nature of the crime and the juridical right damaged, military criminal jurisdiction is not the competent jurisdiction to investigate and, in its case, prosecute and punish the authors of violations of human rights but that instead the processing of those responsible always corresponds to the ordinary justice system”.¹²

The IACtHR is absolutely clear that “regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance.”¹³

It is also important to note that while the IACtHR does not consider it is necessary to reform Article 13 of the Constitution, it reminds Mexico that in addition to harmonizing domestic legislation, “the interpretation of Article 13 of the Political Constitution of Mexico shall be coherent with the conventional and constitutional principles of the due process of law and the right to a fair trial, included in Article 8(1) of the American Convention and the relevant regulations of the Mexican Constitution.”¹⁴

The IACtHR has clarified that where, as in the case of Mexico, a state has voluntarily recognised the jurisdiction of the IACtHR, all branches of the state must implement the Court’s judgements in good faith. Failure to do so would amount to a breach of the international legal obligations the state has assumed.

Amnesty International would also like to remind the authorities that a reform that

¹⁰ Article 57, Code of Military Justice (Código de Justicia Militar)

¹¹ *Radilla-Pacheco vs Mexico*, para. 342.

¹² *Radilla-Pacheco vs Mexico*, paras. 272 – 273.

¹³ *Radilla-Pacheco vs Mexico*, paras. 274

¹⁴ *Radilla-Pacheco vs Mexico*, para 338

does not meet the requirements established in the judgement will not only amount to non-compliance, but will also leave unaddressed the role of military jurisdiction in preventing access to truth and justice for victims of human rights violations. This issue is not only a key element of the *Radilla-Pacheco vs Mexico* but has also given rise to three other cases which are presently awaiting judgement by the IACtHR.

In particular, a reform that only excludes a limited category of human rights crimes, such as extrajudicial executions, enforced disappearances, torture and rape, from military jurisdiction as set out in the Code of Military Justice would raise serious concerns. A reform of this nature, while providing a limited advance, would leave the military justice system responsible for the investigation, trial and punishment of a wide range of human rights violations - including some crimes against humanity recognised in the Rome Statute. Furthermore, related offences, for example complicity or acquiescence or obstructing investigations, would potentially reside with the military courts, preventing all those responsible, to one degree or another, from being held to account in the ordinary justice system. Such a reform might also leave military prosecutors responsible for the preliminary investigation to determine the violation committed and therefore the jurisdiction of the offence. Any or all of these outcomes would not meet the criteria established by the IACtHR and would not address the grave deficiencies of the military justice system.

Amnesty International recognises the complex security environment in many parts of the country resulting from high levels of violence by criminal gangs. However, insecurity cannot be addressed without ensuring that the rights of all, including criminal suspects and bystanders, are respected and guaranteed by security forces.

Compliance with the IACtHR judgement is of direct advantage to the military authorities as it will demonstrate their commitment to uphold human rights standards in practice when carrying out law enforcement operations. Those who call for the military to be protected from prosecution when carrying out these tasks are in reality hindering the rule of law, human rights and public security, not hastening their fulfilment.

As other countries in the region have learnt, to make progress on respect for human rights all institutions must be accountable to the standards of international human rights law. For example, Argentina, Colombia, Nicaragua and Peru have taken steps to exclude human rights violations from military jurisdiction. The judgement of the IACtHR provides a perfect opportunity for the Government and Congress to address this legacy of Mexico's past.

Amnesty International urges the Government of Mexico and Congress to agree and approve legislation to implement the IACtHR judgement in full. Such an important step will not only demonstrate to the world a clear commitment to international human rights law and advance the cause of human rights in Mexico, but will bring closer to an end the 36-year struggle for justice of the family of Rosendo Radilla.

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