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Amnesty International urges Congress to amend the proposed bill to reform the military justice system

Amnesty International regrets that the proposed legislative reform is insufficient. The draft bill presented by the government yesterday to the Senate only envisages excluding a few human rights violations from the military jurisdiction and does not change the way in which allegations of abuse are investigated.

The organization urges legislators to reach an agreement on an amendment that will incorporate the elements stipulated by the Inter-American Court of Human Rights. Only then will Congress demonstrate its commitment to end impunity in cases of serious human rights violations and only then will Mexico be fulfilling its human rights obligations.

The current text of the draft bill proposes transferring cases involving military personnel to the civil courts only when accused of three crimes: enforced disappearance, torture and rape. In reality, this draft bill appears to preserve the jurisdiction of the military courts for all other human rights abuses recognised in the international human rights instruments, including extrajudicial executions, ill-treatment, arbitrary detentions and even genocide and other crimes against humanity. In addition, questions of complicity in abuses committed by others and subverting criminal investigations would continue to be heard by the military courts.

Of similar concern is the role of the military prosecutor in determining, at the stage of the initial investigation, the nature of the criminal offence and therefore whether it will be transferred to the civil justice system. This mechanism could, in fact, act as a block on the cases reaching the civil courts, even for those offences that the draft law excludes from the military justice system.

It is noteworthy that the three judgements issued to date by the Inter-American Court of Human Rights in the cases of Radilla Pacheco, Fernández Ortega and Rosendo Cantú, relate to cases in which the military prosecutor failed to find evidence with which to proceed against those implicated precisely in cases involving enforced disappearance, torture or rape.

In addition, in other recent cases documented by Amnesty International involving members of the armed forces implicated in crimes such as extrajudicial execution, torture and enforced disappearance, the military prosecutor refused to recognise the evidence of such crimes.¹ Cases such as these will not reach the civil justice system for impartial and independent investigation and prosecution, which is why the rights of the victims will continue to be violated.

Background

¹ New reports of human rights violations by the military, AI Index AMR 41/058/2009, December 2009

Last September, Amnesty International addressed a memorandum to the Government of Mexico, both chambers of the Mexican Congress and the judiciary regarding the Mexican State's obligation to comply with the judgements of the Inter-American Court of Human Rights. The judgements clearly require the reform of the Code of Military Justice to include specific criteria:

- The “military criminal jurisdiction shall have a restrictive and exceptional scope”;
- That “only active soldiers shall be prosecuted within the military jurisdiction for the commission of crimes or offences which, based on their own nature, threaten the juridical rights of the military order”;
- 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, where appropriate, prosecute and punish the authors of human rights violations but that instead the indictment of those responsible should always correspond to the ordinary justice system ”.²

For more information, see “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”

<http://www.amnesty.org/es/library/info/AMR41/070/2010/es>

² *Radilla-Pacheco vs. Mexico*, paras. 272 – 273.