



Centro de
Derechos
Humanos
Fray Bartolomé de
Las Casas, A. C.



Centro por la Justicia y el Derecho Internacional



Violations of the American Convention on Human Rights through the use of military jurisdiction in cases of human rights violations in Mexico

Document prepared for the Inter American Commission on Human Rights on the occasion of the thematic hearing carried out on this issue on March 20, 2009

Executive Summary

In Mexico the extension of military jurisdiction to include crimes that constitute human rights violations and do not have any relation with military discipline is a systematic practice that inhibits access to justice and violates judicial guarantees. This practice contravenes Inter-American standards that outline that military jurisdiction should be limited to offenses against military discipline by military personnel, such that human rights violations against civilians are excluded from the competence of these courts.

This problem is brought to light in a context of increasing human rights violations on the part of Mexico's armed forces, reaching an unprecedented 1,230 complaints filed before the National Human Rights Commission (CNDH) against the Secretary of Defense during 2008, due to the thousands of soldiers deployed throughout the country in public security operations.

Article 13 of the Mexican Constitution establishes that "military jurisdiction subsists for crimes and offenses against military discipline..."¹ However, "military discipline" is defined by the army, in Article 57 of its Code of Military Justice (a subordinate piece of legislation), in an expansive manner that

¹ Author's translation

includes even crimes committed by military personnel that violate civilians' basic human rights. As such, this legislation allows for any crime committed by members of the armed forces to be investigated by military authorities and military courts, no matter what legal definitions and rights are contradicted or affected.

Besides the inappropriately wide interpretation given to military jurisdiction in relation to human rights violations, Mexico's system of military justice lacks autonomy and impartiality by its very nature as part of the Executive branch of government. This allows for the possibility that decisions within this system of justice are influenced directly by the Secretary of Defense. Other parts of the Military Code of Justice in themselves violate international human rights standards, including the clause on "due obedience"² as a pretext for excluding criminal responsibility as well as the possibility of amnesties for crimes.

The documented experiences of the signatory organizations bring to light the problems that arise when the Military Attorney General assumes jurisdiction of a case involving human rights violations, many of these cases within the knowledge of this Honorable Commission. In the past two years, the Military Attorney General reported to have only made indictments in less than ten per cent of the cases presented to it that involved crimes by soldiers against civilians. The participating organizations are not aware of any sentence applied during the current presidential administration against a member of the armed forces for grave human rights violations. For civil society organizations this issue is gravely concerning due to the large number of cases that remain in impunity, which itself has allowed for these type of violations to continue to be committed and to weaken the respect for human rights in Mexico. This pattern of impunity is demonstrated by the rising levels of violence (at least 28 deaths caused by soldiers during 2007 and 2008) as well as the repeated submission of these sorts of cases before the Inter American Human Rights system due to the lack of access to justice through domestic legal recourses.

This Honorable Commission has in a number of cases had the opportunity to make recommendations to the Mexican State that human rights violations be investigated and prosecuted in ordinary civil jurisdiction and not in military jurisdiction. However, the Mexican State has not taken the corresponding measures to comply with recommendations made by this body. This Commission, along with human rights organisms from the universal system, have insistently made pronouncements to the Mexican State that it establish effective measures to stem the impunity on human rights violations committed by soldiers. Neither this nor the fact that cases have been taken before the Inter American Court of Human Rights by the Inter American Commission on Human Rights has meant that Mexican authorities carry out concrete actions to modify the Military Code of Justice in line with international commitments.

The need to reform the application of military jurisdiction in Mexico has great relevance especially due to the current legislative proposals that are before

² Author's translation

federal Congress with the aim of modifying the legislation that allows for military jurisdiction to investigate and prosecute human rights violations. In addition, in early March 2009 Mexico's Supreme Court (SCJN) took into its consideration the case of a family member of a civilian victim of extrajudicial execution by members of the armed forces. This case requests that the Military Code of Justice be declared unconstitutional due to the fact that it allows for human rights violations to be included in its application. As such, the Judicial branch in Mexico has a historic opportunity to reverse the pattern of impunity generated by the illegal use of military jurisdiction.

Nevertheless, serious obstacles remain in the way of the necessary reforms that would allow for full compliance with international commitments on the issue of military justice. High level members of government have publicly declared that no reform is to be considered that would allow for soldiers to be tried in civilian criminal courts and has even gone so far as to declare that this very Inter American Commission has never fully proven that the extension of military jurisdiction generates impunity. Moreover, as well as the lack of transparency in spheres of dialogue with civil society on the issue, human rights defenders that approach the question are being increasingly criminalized and suffer harsh reprisals at the hands of government authorities.

Taking the above into account, the eight civil society organizations that sign this document request this Honorable Inter American Commission on Human Rights to make a declaration on this problem, urging the Mexican State to carry out the necessary reforms that would exclude the use of military jurisdiction to investigate and prosecute human rights violations, and ensuring open and transparent dialogue with various actors on the issue, as well as requesting the State for information on the legislative proposals and legal cases currently in process in order to achieve this objective.

National Network of Human Rights Civil Organizations "Todos los Derechos para Todas y Todos"

Mexican Commission for the Defense and Promotion of Human Rights

Human Rights Center of the Montaña Tlachinollan

Center for Justice and International Law

Center for Human Rights Fray Francisco de Vitoria

Miguel Agustín Pro Juárez Human Rights Center (Center Prodh)

Center for Human Rights Fray Bartolomé de las Casas

FUNDAR, Center for Research and Analysis.