



WASHINGTON OFFICE ON LATIN AMERICA

Celebrating 30 years of promoting democracy, human rights and social justice in Latin America.

Recent developments and obstacles in transferring cases of human rights violations from military to civilian jurisdiction in Mexico

Maureen Meyer, Senior Associate for Mexico and Central America¹
January 24, 2012

On July 12, 2011 Mexico's Supreme Court issued an important ruling which determined that "the military jurisdiction established in article 57 of the Military Code of Justice will not be applicable in any circumstance involving situations that violate the human rights of civilians."² The Court made this decision after reviewing the 2009 Inter-American Court of Human Rights judgment against Mexico for the enforced disappearance of activist Rosendo Radilla by members of the Mexican military in 1974 in order to determine the Mexican Judicial Branch's obligations based on this ruling and the way they should be implemented.³

The Supreme Court's decision was widely interpreted as putting an end to military jurisdiction for human rights violations committed against civilians. However, because the July 12 decision was focused on Mexico's obligations to the Inter-American Court and not a specific case, it does not automatically set legal precedent for future cases. When the judgment was issued, the Mexican Ministry of Defense (*Secretaría de la Defensa Nacional*, SEDENA), the Ministry of the Navy (*Secretaría de Marina*, SEMAR) and the Ministry of the Interior (*Secretaría de Gobernación*, SEGOB) jointly classified it as merely providing "guiding principles" for the legal bodies in the country.⁴ For their part, Mexican and international human rights organizations consider the ruling to be historically significant given the Supreme Court's determination of the legally binding nature of the Mexican State's international human rights obligations, which affirms that all judges in the country are required to ensure that the laws they apply are in accordance with the Constitution and international human rights treaties.

Setting legal precedent

In order for binding precedent (*jurisprudencia*) to be established so that all human rights violations against civilians committed by members of the military are investigated and prosecuted in civilian jurisdiction, the Supreme Court will now either need to rule the same way on five consecutive specific cases or to interpret a law that has been interpreted differently by lower level tribunals⁵. To date, the Supreme Court has not ruled on any specific case that would

¹ This memo was elaborated in close collaboration with colleagues from the Tlachinollan Human Rights Center based in Tlapa, Guerrero, Mexico.

² *Suprema Corte de Justicia de la Nación, Tarjeta Informativa, Caso Rosendo Radilla Pacheco*, July 12, 2011.

³ As part of this same determination, the Supreme Court ruled on July 6 that Mexico's courts are obligated to comply with the Inter-American Court's judgment on the case of Rosendo Radilla's enforced disappearance.

⁴ Joint Statement by the Ministry of the Interior, SEMAR and SEDENA, July 12, 2011.

http://www.gobernacion.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A2991&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1

⁵ Human Rights Watch, *Uniform Impunity, Mexico's Misuse of Military Justice to Prosecute Abuses*

set precedent on this matter. The Rosendo Radilla decision involved criteria outside of a legal dispute and this is also case with the Supreme Court's current revision of the legal obligations of the Judicial Branch regarding the Inter-American Court's 2010 judgments in the cases of Inés Fernández and Valentina Rosendo, two indigenous women from Guerrero who were raped by Mexican soldiers on separate occasions in 2002.

Reforms to the Military Code of Justice

In its four judgments on cases against Mexico involving human rights violations committed by Mexican soldiers against civilians since 2009, the Inter-American Court of Human Rights has required Mexico to reform article 57 of the Mexican Military Code of Justice so that, in accordance with international human rights law, all human rights violations committed by Mexican soldiers are investigated in civilian jurisdiction.⁶ On October 18, 2010, President Calderón presented to the Mexican Senate an initiative to modify the Mexican Military Code of Justice. The proposal would only exclude three human rights violations from military jurisdiction – torture, enforced disappearance, and rape – and the preliminary investigation of alleged human rights abuses would remain within the military justice system. This proposal does not fulfill the Inter-American Court's judgments, which ruled that all human rights violations should be investigated and prosecuted in civilian jurisdiction, nor is it in compliance with the July 2011 ruling of the Mexican Supreme Court.

To date, the Mexican Congress has not voted on Calderón's or any other proposal to reform the Military Code of Justice and there is little certainty that a vote will take place prior to the July 2012 federal elections. In the absence of a reform, President Calderón announced on December 9, 2011 that he had "given an important instruction to the Federal Attorney General's Office (*Procuraduría General de la República*, PGR) and the Secretary of National Defense and the Navy to explore mechanisms so that, without violating the current law that binds us, a way is found to transfer or decline military responsibility in favor of the Public Prosecutors and civil judges in cases where members of the Armed Forces are accused of human rights violations."⁷ Nonetheless, as the following information illustrates, SEDENA is not actively transferring cases from military to civilian jurisdiction and, with the exception of the cases that have gone before the Inter-American Court, it continues to assert its jurisdiction to investigate and prosecute soldiers alleged to have committed abuses.

Cases heard before the Inter-American Court

in Counternarcotics and Public Security Operations, 2009.

http://www.hrw.org/sites/default/files/reports/mexico0409web_0.pdf

⁶ These cases involve the victims Rosendo Radilla Pacheco, Valentina Rosendo Cantú, Inés Fernández Ortega, Rodolfo Montiel and Teodoro Cabrera. For information on the Court's rulings, see for example, paragraph 10 of section XII, pg. 103, "Puntos Resolutivos" in *Caso Radilla Pacheco vs. Estados Unidos Mexicanos*:

http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf

⁷ <http://www.presidencia.gob.mx/2011/12/el-presidente-Calderón-en-la-entrega-del-premio-nacional-de-derechos-humanos-2011/>

The Spanish text reads: "Mientras tanto, también, hoy anuncio que he dado una instrucción fundamental a la Procuraduría General de la República y a la Secretaría de la Defensa Nacional y de Marina, a fin de que exploren mecanismos para que, sin violentar la ley vigente que nos obliga, en los casos de violaciones a los derechos humanos en que sean acusados integrantes de las Fuerzas Armadas, se busque la manera de poder transferir o declinar la competencia militar en favor de los Ministerios Públicos y de los jueces civiles."

On August 12, 2011, the PGR notified Inés Fernández and Valentina Rosendo that the investigations of their cases had been transferred from the Military Attorney General's Office to the PGR. In the agreement through which they transferred the investigative file to the PGR, SEDENA continued to insist that the participation of soldiers in human rights violations against the two women had not been proven in spite of the Inter-American Court's judgments ruling the contrary. There has been no progress made in the investigations within the PGR and there are concerns about SEDENA's continued lack of cooperation with the cases.

On November 26, 2010, the Inter-American Court ruled on the case of Rodolfo Montiel and Teodoro Cabera, two environmentalists from Guerrero who were tortured by Mexican soldiers when they were detained in May 1999, and determined that their human rights had been violated. On September 2, 2011, the PGR informed the legal representatives of Montiel and Cabera that the Attorney General's Office had begun investigations into their case on July 15, 2011.⁸ However, it was not until early January 2012 that SEDENA provided the PGR with the case file that the PGR said was necessary in order to continue the investigation into the torture of the two men. The lawyers for Montiel and Cabrera have made clear that SEDENA's investigation regarding the torture should have no evidentiary value in the PGR's current investigation as military jurisdiction is by definition not an independent and competent jurisdiction in which to investigate human rights crimes. In this case, the military investigation does not include any medical evaluation of the victims nor direct testimonies from them or from witnesses from the community where they were detained, among other inadequacies.

The case of Bonfilio Rubio

On June 20, 2009, Bonfilio Rubio was killed when, after inspecting a passenger bus at a military checkpoint in Huamuxtlán, Guerrero, soldiers opened fire on the bus as it pulled away. Shortly after his death, on July 14, 2009, the legal representatives of Rubio's family from the Tlachinollan Human Rights Center requested that the case be transferred from military to civilian jurisdiction. It was not until December 9, 2011, that a federal judge notified Rubio's family that it accepted their *amparo* request which challenged the use of military jurisdiction to investigate and prosecute those responsible for his death. The judge determined that "the victims and the people offended by the crime have legitimacy to demand the *amparo* trial against the application of military jurisdiction; Article 57 of the Military Code of Justice surpasses the limits imposed by Article 13 of the Constitution; and the extent of military jurisdiction in cases that involve civilians is contrary to the jurisprudence of the Inter-American Court of Human Rights, binding to Mexican courts."⁹

This is an unprecedented ruling by a federal judge on the application of military jurisdiction for a case involving human rights violations against civilians. However, Tlachinollan has recently been informed of SEDENA's decision, in representation of President Calderón, to appeal this ruling. Some concerning aspects of the appeal are as follows:

⁸ The Miguel Agustín Pro Juárez Human Rights Center and the Center for Justice and International Law.

⁹ <http://www.tlachinollan.org/Comunicados/gana-amparo-familia-de-indigena-naua-ejecutado-por-elementos-del-ejercito-mexicano.html>

- The fifth grievance sustains that “to date, there is no legal norm that establishes [...] that when a soldier commits a crime against a civilian the jurisdiction to deal with the case resides in a civilian legal authority, on the contrary, article 57 of the Military Code of Justice, which to date has not been declared unconstitutional, indicates that the jurisdiction in such a case lies within military courts...”
- This same grievance states that the Inter-American Court’s judgment on the Rosendo Radilla case does not constitute jurisprudence from the Court and that the sentence “does not impose jurisdiction rules on the Mexican State to judge soldiers since this is a power of the State and not of an External Court.” The appeal also states that the Mexican Supreme Court’s decision on the Rosendo Radilla case is illegal because it was not based on a legal revision of the case from lower courts or due to a conflict of jurisdiction and for this same reason, it is not legally binding.
- SEDENA further states that until there is a law or legal framework that specifies which crimes can be considered human rights violations, there is no legal basis for investigating the cases in civilian jurisdiction.
- In regards to the case of Bonfilio Rubio, SEDENA affirms that his death should not be considered a human rights violation because the soldier who shot him was not directly ordered to do so.

While the Inter-American Court’s rulings and the July 2011 judgment by the Mexican Supreme Court make clear Mexico’s obligation to stop using the military justice system to investigate and prosecute human rights violations committed by the military, the above illustrates that there are multiple challenges for this to take place, particularly the military’s own resistance to transfer cases. The arguments presented by SEDENA in the appeal of the Bonfilio Rubio case further suggest that little or no progress will be made on transferring cases to civilian jurisdiction until the Mexican Congress passes a reform to the Military Code of Justice.

One of the requirements included in US support for Mexico through the Merida Initiative is “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 committed violations of human rights, and the federal police and military forces are fully cooperating with the investigations.” As WOLA and other organizations have stated on several occasions, it is clear that this requirement will not be met until Mexico’s Military Code of Justice is reformed to exclude all alleged human rights violations from the military justice system and SEDENA begins to actively transfer cases to civilian jurisdiction. Concerns about the lack of progress to cease to apply military jurisdiction for human rights crimes, both through legal changes and in practice, should be expressed by US authorities with their Mexican counterparts. The upcoming bilateral human rights dialogue between the two governments will be an important opportunity to raise these concerns.