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Mexican Armed Forces and Security in Mexico

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INTRODUCTION

For nearly 40 years now, the Mexican armed forces have been engaged in tasks that are more closely aligned with public safety than national security. Mexico's armed forces have in fact been asked to contribute to the national well-being through a wide range of activities, such as dealing with the aftermath of natural disasters, running health campaigns, managing anti-hunger facilities, safeguarding national strategic facilities, patrolling Mexico's exclusive economic zones, and helping in public safety and security operations, particularly against organized crime. In addition, they are now being asked to lead national efforts on cyber defense and participate in international peace operations. This is a broad agenda for a relatively small military—around 270,000 active personnel.

Of these responsibilities, none is more controversial than efforts to utilize the armed forces in public safety and internal security. There is indeed a growing debate in Mexico on the armed forces' role in fighting drug trafficking and organized crime, and taking on public safety and internal security duties in cities and states around the country. Engaging the armed forces in these types of responsibilities is even more contentious because their precise role in such tasks is unclear and their participation remains largely unregulated. Vis-à-vis this lack of regulatory definition, key questions have emerged. What are the terms and limits of the armed forces' involvement in public safety and internal security? What are the armed forces' rules of engagement in such activities? When and how will they be held accountable if they exceed their mandated duties?

The Mexican armed forces have a long tradition of loyalty to the government, and their participation in what they call "solidary and subsidiary activities" is largely motivated by their sense of duty. When they have been called to act, they have done so with little resistance. But the Mexican public is increasingly uneasy with the armed forces' role and participation in security, particularly because they operate in a regulatory limbo and have recently been accused of human rights abuses, abductions, torture, forced disappearances, and sexual assaults.[1]

Even though there have been some efforts to hold the armed forces accountable for their performance,[2] the main problem is that no one really knows exactly what the armed forces are supposed to do, even if everyone can cite a long list of activities that the armed forces engage in. The lack of clarity on their role in public safety and internal security has brought them into close contact with civilians without clear rules or adequate training on engaging citizens on a day-to-day basis. This has opened the military to accusations of due process and human rights violations, allegations that the armed forces have exceeded their stated institutional capacity, and concerns that the limits of their involvement in terms of time, territory, jurisdictional authority, etc. have been set arbitrarily.

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The armed forces have designed their own strategic documents without effective legal limits on their operations.

A LEGAL FRAMEWORK FOR ARMED FORCES ENGAGEMENT IN PUBLIC SAFETY AND INTERNAL SECURITY

Mexico's armed forces do not act in a vacuum. There is a constitutional framework that outlines their role.[3] But by design, the constitution is vague and does not provide operational guidance. The 1986 Law of the Army and the Air Force and the 2002 Law of the Navy are two enabling acts (*Leyes Orgánicas*) that attempt to shape the role of the armed forces in Mexico.[4] And although both laws call on the armed forces to participate in "internal security" activities, there is no additional regulation defining what this means or the terms, limits, and conditions of their engagement. Also, neither law makes a clear distinction between public safety, internal security, or national defense, conflating them all into a vague concept of "internal security." To illustrate this confusion, the armed forces are tasked with duties (enumerated above), that in the United States would be separated into law enforcement, homeland security, and national defense.

The absence of clearer legislation and regulations on the operations of the armed forces, particularly when exercising law enforcement duties, has left the armed forces open to allegations of illegal actions and of due process and human rights abuses when interacting with the civilian population.

FUNCTIONS OF THE ARMED FORCES IN THE LAW

According to Mexico's Organic Law on the Army and the Air Force (Title I, Article 1), the general missions of the army and air force are: 1) to defend the nation's integrity, independence, and sovereignty; 2) to guarantee internal security; 3) to attend to the public needs of the civilian population; 4) to advance the country's progress through civic actions and social projects; and 5) in the case of a disaster, to maintain public order, help people in need and protect their possessions, and reconstruct affected zones.

Based on the *maintenance of public order* clause, for decades, the armed forces have been involved in an unconventional strategy to combat organized crime. To achieve this aim, the armed forces have participated in public safety and security operations, but without a clear mandate, well-established operating procedures, or even legal protections for themselves or citizens while performing these duties. Since 2007, their involvement has become even more controversial, as evidence has emerged of incidents of extra-judicial executions, torture, rape, and numerous violations of Mexican citizens' constitutional rights. Since 2006, the National Commission of Human Rights (CNDH, for its acronym in Spanish[5]) has "received approximately 9,000 complaints of abuse by the armed forces, and issued reports in over 100 cases in which it found that army personnel had committed serious human rights violations."[6] There also have been allegations of major human rights abuses, like the military's massacre of disarmed gunmen in Tlatlaya, State of Mexico, in June 2014.[7] The Federal Police, however, has been accused of these same human rights abuses, as in Tanhuato, Michoacán, on May 22, 2015.[8]

SELF-REGULATION AND THE NEED FOR A NEW LAW

In response to a new reality in Mexico in terms of security, President Enrique Peña Nieto instructed the armed forces to create a National Defense Policy document. In this document, named the "2013–2018 Sectorial Program for National Defense," the armed forces attempt to outline their strategy and create guidelines for their operations in public safety and security engagement in a complicated domestic security environment. Unfortunately, this document is not regulatory or even compulsory but merely declarative in nature. It was also largely written by consultants, with relatively little participation of the armed forces themselves. Similarly, the armed forces also established the Joint National Defense Plan, which outlines how the two military departments—the Department of National Defense and the Department of the Navy—will coordinate their

actions in public safety and internal security. These plans are not legislation, however, and the armed forces have maintained that most of the content is confidential, arguing that releasing the information would compromise their mission. Unfortunately, such secrecy also limits democratic accountability.

It is also worth noting that the Mexican armed forces have in fact argued for the need for legislation to regulate their activities since at least as far back as the Calderón administration, and President Calderón himself had a bill drafted, but he failed to send it to Congress and the Mexican congress has refused to debate the issue. Clearly, neither President Calderón nor President Peña has made it a legislative priority.[9] Thus, much of the problem is related to legislative inaction. The armed forces have designed their own strategic documents without effective legal limits on their operations. More recently, in April 2016, the Mexican congress approved changes to the Military Justice Code, giving the military broad powers to search and seize homes and facilities, including the ability to search and seize the offices of the executive, legislative, and judicial branches. It also enables the military to conduct electronic surveillance. All of these activities, presumably, can only be done when investigating crimes committed by military personnel, but in a country where crime levels are high, nearly anyone can be spied on under the excuse that it is somehow connected to criminal activities. It is worrisome, however, that this enables the military to investigate itself, rather than bringing them under the jurisdictional control of civil justice.

In a sense, while Latin America has moved away from expanding the role of the military in civil society and justice, Mexico, which had been a role model for civil control of the military for much of the 20th century, is moving in the opposite direction.

CONCEPTUAL CLARIFICATION AS THE BASIS FOR ANY NEW LAW

New comprehensive legislation on the armed forces and their role in public safety (if any is advisable) and internal security (if at all) is urgent in Mexico. New legislation, however, would require a national debate on the meaning of and agents for public safety and internal security. Conflating these two with national defense may no longer make sense for the armed forces as Mexico transitions to a functioning democracy. There needs to be a clear distinction among all three concepts. Moreover, although it is true that state-to-state wars are diminishing in number and that non-state actors have acquired the capability to threaten states, there may no longer be a reason to involve the military in fighting organized crime or providing internal security, if better suited law enforcement organizations have not first been given a chance. It may be better to reorganize the entire domestic security apparatus in favor of leaving the military out of everything but national defense.

If Mexico's political leadership continues to leave these concepts undefined in the law and congress refuses to restructure the country's public safety, internal security, and national defense bureaucracies with clear and democratic limits, the armed forces will continue to be mired in confusion, risk the continual deterioration of their image, and violate the law—and the Mexican public will wrest support away from the Armed forces, which heretofore continue to be one of the most highly respected institutions by the Mexicans.

WITHOUT A NEW LAW

To reiterate, the worst scenario for Mexico, the armed forces, and the Mexican public is that the status quo remains. The armed forces require a law that reframes and modernizes the concepts of public safety, internal security, and national defense; clarifies the role, conditions, terms, and limits of the armed forces' engagement; and establishes mechanisms to hold them accountable. Without a new law, Mexico's armed forces will continue to come into contact with the civilian population without an understanding of their civil and political rights. Moreover, they will continue to be accused of massacres, as in the case of Tlatlaya, and torture and rape, among other

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abuses.[10] Citizens and NGOs will not know where to draw the line in their interactions with the armed forces or how to hold them accountable if and when they exceed the limits of their mandate.

Without a new law, political and elected officials can use the armed forces at will, as there is no guide for when they can be called into action. Finally, they will clearly continue to be overextended, not just in their activities, but also in their institutional and material capabilities, which can only distract from what should be their main mission: readiness for national defense.

CONCLUSION

A new law governing public safety and internal security is long overdue in Mexico. This is most apparent in the increasingly controversial role of the armed forces in the country's public safety and internal security fields. Congress must act soon. The failure to enact legislation will have detrimental consequences for both the armed forces and Mexico's fragile democracy.

ENDNOTES

1. See the numerous reports and recommendations of the National Commission on Human Rights of Mexico at http://www.cndh.org.mx/Recomendaciones.

2. In April 2015, the Mexican Congress reformed the Code of Military Justice, "stating that abuses committed by members of the military against civilians should be handled by the ordinary criminal justice system." Human Rights Watch, "World Report 2015: Mexico," 2015. Retrieved from https://www.hrw.org/world-report/2015/country-chapters/mexico.

3. Miguel Carbonell, "El Rol de las Fuerzas Armadas en la Constitución Mexicana." *Ius et Praxis* 8(2002):1; 35–51. See http://www.redalyc.org/articulo.oa?id=19780105.

4. For a text of both laws, see http://www.diputados.gob.mx/LeyesBiblio/pdf/169_061114.pdf and http://www.senado.gob.mx/comisiones/marina/docs/Ley_OAM.pdf.

5. *Comisión Nacional de los Derechos Humanos*.

6. Human Rights Watch, 2015.

7. Comisión National de Derechos Humanos, "Recomendación No. 51/2014," Mexico, DF: CNDH, 2014. http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2014/Rec_2014_051.pdf.

8. Comisión Nacional de Derechos Humanos, "La CNDH Integra Expediente de Queja e Investiga en Forma Exhaustiva y Objetiva los Hechos Violentos Ocurridos en Tanhuato, Michoacán," Mexico, DF: CNDH. See http://www.cndh.org.mx/sites/all/doc/Comunicados/2015/Com_2015_135.pdf.

9. Interview with Carlos Rodríguez Ulloa, a consultant and expert on the Mexican armed forces. Mexico City, July 13, 2016.

10. Associated Press, "Video of soldiers torturing woman prompts apology from Mexican defense chief," *Los Angeles Times*, April 17, 2016. See http://www.latimes.com/world/mexico-americas/la-fg-mexico-army-torture-20160416-story.html.

AUTHORS

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