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E.O. 13526: N/A

TAGS: PHUM, PGOV, KJUS, MX

SUBJECT: Inter-American Court Decisions Home in on Mexican Military  
Justice Reform

REF: A) 10 MEXICO 5292; B) 10 MEXICO 4892;

1. (SBU) Summary: Recent Inter-American Court of Human Rights (IACHR) rulings, including the December 20 decision on the case of two Guerrero-based ecologists, call for reform of the Mexican military justice system. The GOM committed to comply with the November 2009 IACHR ruling that calls for the removal of human rights cases from the purview of military courts. On October 18, it submitted draft legislation proposing civilian jurisdiction over cases of torture, rape, and forced disappearance (reftels). Alluding to this legislation, the IACHR's December 20 ruling calls explicitly for the exclusion of all human rights-related crimes from military jurisdiction. Changes to the Code of Military Justice will likely become more comprehensive as the draft legislation makes its way through the Senate and Chamber of Deputies (ref A). However, the current legislation will likely be seen as inadequate by the IACHR and will provoke further calls by U.S. human rights groups to withhold U.S. assistance. End summary.

UNITED STATES DEPARTMENT OF STATE

REVIEW AUTHORITY: OSCAR J OLSON

DATE/CASE ID: 20 OCT 2011 201101523

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2. (SBU) The IACHR's November 2009 decision in the Rosendo Radilla case was the first to address the issue of jurisdiction of civilian courts over human rights cases involving the military, and prompted the GOM to introduce draft legislation to limit military jurisdiction. The October 2010 ruling on the case of Ines Fernandez and Valentina Cantu further reinforced this position. The Court's most recent decision in the case of Rodolfo Montiel and Teodoro Cabrera further refines the definition of human rights violations requiring civil jurisdiction, noting that "this conclusion applies not just to the crimes of torture, forced disappearance, and rape, but to all human rights violations." This language is an unambiguous signal that draft legislation the GOM submitted to the Senate on October 18 which would preclude military jurisdiction in those three crimes will not be sufficient to satisfy the Court. (Note: The IACHR is expected to issue a formal decision on GOM compliance with the Radilla sentence during its next session, which begins on February 21. End note.)

3. (U) The following are summaries of the most recent IACHR rulings in cases brought to trial against the GOM:

December 20, 2010 - Rodolfo Montiel and Teodoro Cabrera - Environmental defenders from the state of Guerrero were victims of arbitrary detention and torture by members of the military in 1999. In its third ruling issued this year against Mexico for violations committed in the state of Guerrero, the IACHR ruled against the GOM for violations of the rights to liberty, personal integrity, due process and judicial protection. In its ruling, the Court ordered an investigation under civilian jurisdiction for torture of the two men, the payment of reparations, provision of medical and psychological treatment, improvement of the governmental Register of Detained Persons, and reform of the Code of Military Justice to exclude all human rights crimes from military jurisdiction.

October 1, 2010 - Ines Fernandez Ortega and Valentina Rosendo Cantu - Two indigenous women were raped by soldiers from the Mexican Army in the municipality of Ayutla, Guerrero, in 2002. The IACHR decisions in both cases call for the GOM to re-open the criminal investigations in civilian courts, investigate the officials who undermined initial investigations, strengthen the procedures for investigating rape cases, improve medical care for victims, and provide reparations.

November 23, 2009 - Rosendo Radilla Pacheco - The community leader was abducted in 1974 by soldiers in the southern Mexican state of Guerrero. The ruling holds the GOM responsible for violations of Radilla's right to life, personal liberty and humane treatment, as well as the right to judicial protection and

humane treatment of the victim's kin. It calls for reparations and psychological treatment for the victim's family, investigation of wrongdoing by authorities, a public apology and memorial, and reform of the Code of Military Justice to exclude human rights crimes from military jurisdiction.

November 16, 2009 - "Campo Algodonero" (Cotton Field) - The remains of Claudia Gonzalez, 20, Esmeralda Herrera, 15, and Berenice Ramos, 17, were found with the corpses of five other women in November 2001 on a waste site known as "Campo Algodonero" on the outskirts of Ciudad Juarez, Chihuahua. The IACHR found that the GOM had violated the rights of the three young women and their families by failing to prevent their disappearance and murder. The Court ordered the GOM to pay reparations and legal costs to the victims' families, reopen investigations into the murders, hold a public ceremony to apologize for the killings, build a monument to the three young women in Ciudad Juarez, and expand gender sensitivity and human rights training for police. The Court also called on authorities to create a website on women and girls killed since 1993 in the border city, increase efforts to find women who

have gone missing, and investigate death threats and harassment against members of victims' families.

4. (SBU) The deadlines for GOM compliance with the rulings on the Radilla and Campo Algodonero cases were December 15 and December 10, 2010, respectively. While the GOM has submitted legislation to limit military jurisdiction in an effort to comply with the Radilla ruling and has allocated payments to the victims' families in both instances (though the Radilla family has refused the GOM offer), compliance with other aspects of the rulings is lacking. Investigations have not been reopened, and the GOM has not publicly apologized or acknowledged responsibility in either case. Felipe Zamora, Undersecretary of Government for Human Rights and Legal Affairs, has announced, however, that President Calderon and Chihuahua governor Cesar Duarte will preside over a memorial service for Campo Algodonero victims on March 8.

#### Comment

5. (SBU) While IACHR has yet to issue a formal evaluation of GOM compliance with the 2009 Radilla sentence, the Court's most recent ruling indicates that it is not satisfied with the GOM proposal to limit military jurisdiction only over a narrowly defined list of human rights violations. For now, the issue rests with the Mexican legislature, which must grapple with the delicate balance between compliance with international law and supporting its military during a time of domestic conflict. USG equities are clearly at stake, not just because of our own Merida Initiative budget negotiations with the Hill, but more broadly as we encourage a more

modern, transparent and accountable Mexican military. End comment.

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