

THE TRANSPARENT OPACITY OF THE MEXICAN ARMY

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The passage of the Federal Law for Transparency and Access to Information (LFTAIPIG in Spanish) and subsequent launching of the Federal Institute for Access to Information (IFAI in Spanish), created effective tools for revealing inconsistencies between military activity and the law. These legal gaps have existed at least since 1994, when the government bypassed constitutional provisions in its response to the armed rebellion of the Zapatista Army of National Liberation, as well as in 1995, when the approval of the Law for Coordination of the National Public Security System opened the door for the armed forces to leave their barracks.^{1 2}

Chiapas has been living under military occupation for 11 years. More than 70 military camps installed in rural communities currently dominate indigenous territory in the state, giving rise to Army abuses of citizens' rights that persist with impunity, due to a lack of legal clarity or effective accountability mechanisms.

In this context, this essay illustrates how public access to governmental information documents the legal gaps involved.

Who is telling the Truth, Civil or Military Authorities?

On March 15, 2006, in testimony before members of Congress, then Minister of the Interior, Carlos María Abascal Carranza declared, "as the exceptional circumstances that once existed in Chiapas have at this point been overcome, and the so-called "gray zone" no longer exists in that state [...] today Mexican Army presence there only addresses the normal needs of a typical border state, not those of a conflict zone."³

¹ Article 29 of the Constitution, which establishes mechanisms to be taken into account "in case of invasion, serious disturbance of public peace, or any other situation that puts society in grave danger or conflict," has never been fulfilled or even considered. The Article can be read at: <http://info4.juridicas.unam.mx/ijure/fed/9/30.htm?s=>.

² Ley General que Establece las Bases de Coordinación del Sistema Nacional de Seguridad Pública, *Diario Oficial de la Federación*, December 11, 1995. Article 12 establishes a council as ultimate coordinating body, which includes the Ministers of Defense and of the Navy. The law denaturalizes the general functions of the armed forces and deliberately confuses "public security" with "national security". Full text available at: <http://info4.juridicas.unam.mx/ijure/fed/169/default.htm?s=>.

³ Secretaría de Gobernación (Ministry of the Interior), "Superadas las circunstancias de excepción que tuvieron lugar en Chiapas," Bulletin 083/06 (March 15, 2006) Full text available at: www.segob.gob.mx, Bulletins section.

However, through IFAI Resolution 247/06, the Army's perspective on the situation in Chiapas and its role there was made public. In a document dated February 27, 2006—just three weeks before the Minister's testimony before Congress—the Army stated, “[...] the EZLN, a rebel group, has not backed down from its position; as it is still armed and is maintaining a real presence in its area of influence, [...] and as it operates at the margin of the law within national territory, it represents a permanent risk for governability.”⁴

The expression “exceptional circumstances” has no legal basis, and in practice denotes a military policy applied outside the law. Moreover, the contradiction between two different offices in the same federal government raises doubts about how deeply the government takes its responsibility to ensure Mexicans' right to know about the meaning and effects of such a policy. Especially, it raises doubts about whether the government is protecting the rights of those directly affected by that policy.

Transparent Cynicism

The day after the 12th anniversary of cessation of open combat in Chiapas (January 15, 1994), I filed a formal information request through the IFAI's Information Request System (SIS in Spanish) with the Ministry of Defense (Sedena in Spanish).⁵ I asked for, “[...] the names of alleged zapatistas arrested in Chiapas during the first fifteen days of 1994, the place they were arrested, and whether they were later released or turned over to another authority.”⁷ I received an unexpected reply: “The Mexican Army [...] does not carry out activities related to the arrest of individuals [...]”⁸

IFAI Commissioner Juan Pablo Guerrero Amparán, in appeal resolution No. 246/06, demonstrated with extensive public evidence that the Army does indeed arrest people on a daily basis.⁹ ¹⁰

Here, however, I will focus on the rather unusual debate that emerged after I received the Army's initial response to my information request.

⁴ IFAI Resolution 247, March 29th, 2006, Lead Commissioner Alonso Lujambio Irazabal, p. 5, text available at: <http://www.ifai.org.mx/resoluciones/anual.php?anio=2006>.

⁵ Article 15 of the LFTAIPG establishes a maximum time-limit of 12 years for reserving information, therefore the submission of such an information request at this time would not allow Sedena to classify the information as reserved.

⁶ Available at: <http://www.sisi.org.mx/>.

⁷ Information request No. 0000700005306, January 16, 2006, available at: <http://www.sedena.gob.mx/index4.html>.

⁸ *Ibid.*

⁹ IFAI Resolution 246, April 12, 2006, Lead Commissioner Juan Pablo Guerrero Amparán. This document includes detailed public evidence of the arrests carried out by the army on a daily basis. Available at: <http://www.ifai.org.mx/resoluciones/anual.php>.

In their response to information request no. 0000700005306, the Army argued that, since it was not legally authorized to arrest people, it did not have the information I requested. In response, I argued that although it is true that the Army is not authorized to do so, it arrests people anyway, and did so at the time and place I had indicated in the initial request. In the end, the debate was only resolved through the IFAI's appeals process, where the Lead Commissioner demonstrated at great length that actually the Army did have jurisdiction to arrest people in case of flagrant violations, or when it was asked to do so by the appropriate authorities. Therefore, since there is public evidence of these particular arrests, the appeal resolution mandated that the Army release any related information.

The fact that the Mexican Army recognizes that it does not have the authority to make arrests, but does so anyway, points to a contradiction between the law and what the Army does in reality. However, there exists no mechanism to challenge this contradiction, which has now been made public because of the LFTAIPG.

Unfortunately, IFAI Resolution 246/06 is largely useless as a tool to close the gap between law and practice, because there is nothing in the resolution that compels the Army to change its practices. The Army will continue to make arrests and then deny that it has the authority to do so. This means, among other things, that it can avoid its responsibility to release the identity of detainees, doing so only at its own discretion.

In the end, Resolution 246/06 was not even an effective means to access information. The Army's response to the resolution was an official declaration that the information requested, later mandated to be released by the IFAI, "does not exist". The Army based this response on Article 42 of the LFTAIPG that reads, "Agencies are only compelled to turn over documents that are found in their files [...]" Article 42 does not establish an impartial mechanism that would independently verify whether or not the requested information really does "exist" in an agency's archives, or whether it is being hidden. The outcome is clear enough: the Army is accountable to no one for the arrests it makes, which is a perfect framework for the forced disappearance of people.

¹⁰ Editor's note: Here Chamberlin is referring to the appeals process of the IFAI, where whenever a requestor is unsatisfied with an agency's response, they can request the intervention of the IFAI to determine whether or not the agency's response was appropriate. In this process, one of the five IFAI commissioners is assigned to be the lead on the case, carrying out a thorough investigation into the issue at hand to determine whether or not the agency's response is legitimate. In this case, Commissioner Juan Pablo Guerrero was assigned as the Lead for the appeal filed by Michael Chamberlin when challenging the legitimacy of Sedena's initial response to this information request. These investigations are then used to determine the IFAI's resolution to an appeals case, where the Lead Commissioner presents the evidence gathered to the other four commissioners in weekly public sessions. Decisions are then reached through a vote, where majority rules, and if at least three commissioners agree with the Lead Commissioner's initial assessment, the resolution becomes official.

The ideal scenario in these kinds of cases would be: if an IFAI resolution identifies inconsistencies or gaps in Mexican law, or extra-legal activities by government agencies, then the State itself should implement reforms to address them. Otherwise, public government information becomes merely cynicism.

Guaranteed Impunity

Article 14 of the Transparency Law states that, “The classification of information as “reserved” cannot be utilized when it concerns the investigation of serious violations of basic rights or crimes against humanity.” This Article has at least two major limitations.

The first is that there exists no instrument under Mexican law that *defines* basic rights or crimes against humanity. Although Mexico has signed a number of international conventions that provide such definitions, which could be applied to these cases, national legislation must be brought in-line with international agreements, therefore integrating such crimes into the Federal Penal Code.

The second major limitation to Article 14 of the Transparency Law is that the type of information referred to in the clause can only be released to the government agencies and legal representatives investigating such crimes. In most cases, the authority responsible to investigate human rights violations would be the Public Prosecutor’s Office. However, when the Army is accused of such violations, the authority to investigate such cases is limited to the Army itself. In other words, the Army is given immunity from intervention by external legal or penal authorities, and has demonstrated, in a number of cases, a tendency to treat human rights violations with impunity. In regards to the Mexican Army’s immunity from external prosecution, the Inter-American Human Rights Commission has stated that, “[...] in neither nature nor structure does the military penal jurisdiction satisfy the criteria for independence and impartiality as established in Article 8(1) of the American Convention.”¹¹

Even in the improbable event of a serious external investigation into crimes committed by military personnel, serious obstacles would need to be overcome. One such obstacle is related to the fact that in order to prosecute a crime, it is necessary to firmly identify the individual responsible. Currently, the Army is under no legal obligation to release the identity of its officers, military units or installations.

¹¹ Inter-American Human Rights Commission, “Report 53/01. Case # 11.565. Ana, Beatriz and Celia González Pérez.” Mexico. April 4, 2001. Paragraph 81. Available at: <http://www.cidh.org/annualrep/2000sp/capituloiii/fondo/Mexico11.565a.htm>.

The only legal disposition that is even remotely relevant to holding military personnel accountable for their actions is a Presidential Decree from December, 1963, which establishes guidelines for the identification of military vehicles by color and the assignment of, “a white seven-digit code, painted or adhered to the sides or back of the vehicle.”¹² However, after requesting information through SISI on “the specific digits” assigned to “the arms, unit, and specialty,” as well as the “agencies and installations” [...] that are used in the codes identifying military land vehicles,” I received the following response from Sedena: “it is not possible to provide disaggregated information on specific digits, [...] as this would be a matter of publicly disclosing information that [...] may endanger or create obstacles for current military operations against organized delinquency [...]”¹³ This response was upheld by the IFAI in its appeals process.¹⁴

At the same time, military officials are simply not accountable for their actions, at least not to the public, and the lack of reliable mechanisms to identify them puts the civilian population at risk. Such is the case in Chiapas, where civilians have to suffer the consequences of such an irresponsibly ambiguous legal environment justified through the term “exceptional circumstances”.

Conclusion

Accessing public government information through the IFAI has demonstrated the extent of the legal ambiguity that surrounds military activity in Mexico, and in particular the Army’s presence in Chiapas, which provides the perfect alibi for impunity and corruption. The examples described above indicate that a Transparency Law and an autonomous regulatory body such as the IFAI are not enough; Mexico also needs a way to guarantee legal protections and mechanisms for accountability. Without it, the only thing that becomes transparent with these changes is government cynicism.

The Mexican Army must be rigorously subject to civil authority. This means—if there really is an interest in moving toward the consolidation of a true democratic state—that these authorities and especially legislators, must establish boundaries for the armed forces. However, after more than ten years of deliberate confusion, all signs seem to indicate that when it comes to the Army, those who currently move in governmental spheres prefer ambiguity over transparency.

¹² Decreto Presidencial sobre el Color Reglamentario de los Vehículos Militares, *Diario Oficial de la Federación*, December 14, 1963.

¹³ Application 0000700040103, November 16, 2003. Available at: <http://www.sedena.gob.mx/index4.html>.

¹⁴ IFAI, Resolution 521, 2003. Lead Commissioner José Octavio López Presa. Available at: <http://www.ifai.org.mx/resoluciones/anual.php>.