



Centro de Derechos Humanos
Miguel Agustín Pro Juárez, A.C.

Miguel Agustín Pro Juárez
Human Rights Centre, A.C.

FOCUS

Human Rights in Mexico

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The Government's Actions on Human Rights Inside and Outside of Mexico

During the Fox Administration, Mexico has developed an important foreign policy in the area of human rights. Recently, during the 60th Period of Sessions of the United Nations Commission on Human Rights, Mexico presented resolutions on the human rights of migrants, supporting the Special Rapporteur as well as the International Convention on this issue; on the protection of human rights in the context of the fight against terrorism; on indigenous peoples in support of the continuation of the rapporteur's mandate; and on the human rights of the disabled. Additionally, Mexico specifically supported resolutions on impunity, the abolition of the death penalty, extrajudicial executions, the forced disappearances of persons, and the process of analysing the viability of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Mexican government is promoting these same issues in the context of the upcoming General Assembly of the OAS. Mexico has also gone to the Inter-American Court on Human Rights to request two important Consultative Opinions regarding minimal judicial guarantees and due process in the context of the death penalty legally imposed on foreigners and consulate support in these

cases, as well as on the legal condition and rights of migrants.

Ironically, in many of these issues Mexico does not comply with its international commitments, as is the case with migrants from Central and South America who cross through our country to arrive in the United States, where the Mexican State does not provide them with legal guarantees and whose physical integrity and personal security is violated with impunity. Additionally, as can be seen in the articles that we present in this edition of Focus, indigenous issues have not been properly attended to in Mexico, the Special Prosecutor's Office to investigate crimes of the past has not produced acceptable results, freedom of expression continues to be at risk, the process to elaborate the National Human Rights Programme does not guarantee that the most serious human rights problems in the country will be addressed, and the government's dialogue with civil society is questioned for its incompletion of the agreements reached regarding the project of constitutional reform in the area of human rights. In light of this, it continues to be evident that Mexico's internal politics do not reflect the will and interest expressed by the Mexican government internationally.

The Actions of the Government Regarding Human Rights Are Questioned

The National Human Rights Programme

As part of the Technical Cooperation Agreement between the United Nations High Commissioner for Human Rights (UNHCHR) and the Mexican government, once the Assessment on the Human Rights Situation in Mexico, elaborated by independent experts, was completed and presented to president Fox, which was done on December 8, 2003, this Assessment would become the basis for a National Human Rights Programme (NHRP). Although the Technical Cooperation Agreement stipulates that said Programme should be carried out by independent experts in coordination with the Mexican government, in a process similar to that used to elaborate the Assessment, which was coordinated by the representative of the UNHCHR in Mexico, Anders Kompass, with extensive participation of civil society, the Mexican government decided that the Secretariat of the Interior (*Secretaría de Gobernación*, SEGOB) would coordinate the elaboration of the Programme.

On April 16, 2004, the Federal Executive approved a methodology for the National Human Rights Programme. According to the approved methodology, the Programme will be elaborated through two processes: a federal process directed at the offices of the federal government and another of national character directed at local governments and their legislative and judicial branches. According to the federal plan, the elaboration phase of the federal process will begin in May and finish in June 2004, followed by the revision and approbation phases in July; the national process will finish in November in order to be published and disseminated by the end of 2004.

As stipulated by the government, the elaboration of the NHRP will be coordinated by the Secretariat of the Interior, through the Commission of Governmental Policies on Human Rights, established by a presidential decree in March of 2003, and replacing the Inter-Secretarial Commission originally established in 1997. The function of the Commission is to coordinate the actions of the different offices of the Federal Executive Branch in the area of human rights.

A new promotion of the process at the beginning of 2004

Since January of this year, due to the uncertainty of the preparation of the process to elaborate the National Human Rights Programme, the civil organisations who are members of the Liaison Committee-recognised as a partner in the Technical Cooperation Agreement- presented to the Office of the UNHCHR as well as the Human Rights Office of the Secretariat of the Interior, proposals to serve as a basis for the preparation of the process of elaborating the NHRP.

At the end of March, the Liaison Committee also presented to the Human Rights Office of SEGOB a proposal of methodology for the design, elaboration, evaluation and monitoring of the NHRP in order to promote a permanent and inclusive dialogue with the government, insisting on the need to respect the spirit and wording of the Technical Cooperation Agreement where civil society's participation was considered an essential element in the design of public policies.

Based on its proposed methodology, the Liaison Committee on two occasions issued

very precise observations to the drafts of the official methodology that SEGOB gave to them, with the explicit purpose of having the requested changes taken into account in the final version of the document.

The limitations in the approved methodology

Unfortunately, the final document that was approved by the Commission on Government Policies in the Area of Human Rights has serious limitations and does not take into account the in-depth observations that were made. These limitations include:

The unilateral prioritisation of the issues to include in the NHRP

Although it is positive that a wide variety of issues related to civil, political, economic, social and cultural rights, the removal of reserves to international or regional human rights instruments, the completion of the resolutions made by international human rights bodies, structural reforms, etc. are included in the programme, particularly since the original proposal only included work on civil and political rights, there has not been a dialogue with civil society organisations regarding the prioritisation of these issues and in fact, this prioritisation was done unilaterally. In order to understand the need for this prioritisation, it is necessary to remember that the Assessment contains 31 general recommendations and more than 800 specific recommendations and that Mexico has received more than 400 recommendations by the different inter-governmental human rights mechanisms.

Limited mechanisms for the participation of civil society

Although the proposal says it has six different mechanisms for the participation of civil society, in reality the main space will be in the thematic working groups of the sub commissions of the Commission on Government Policies, where only organisations from Mexico City participate, with a voice but no vote. The other types of participation are not clearly defined in terms of how they will take into consideration the opinions that are expressed and how they will guarantee that said participation is extensive.

Distancing itself from the Technical Cooperation Agreement

One of the main guarantees that the National Human Rights Programme would be elaborated in a participative manner, and that it would attend to the structural human

rights problems identified in the Assessment, was that it was to be included as part of the Technical Cooperation Agreement. This assured that the Office of the High Commissioner on Human Rights in Mexico would coordinate the process, as was originally established in the Agreement. This external coordination by an independent body, which is an expert in the area of human rights, gave confidence to civil society to actively participate in the process. However, as was previously mentioned, the government distanced itself from the Technical Cooperation Agreement and decided to coordinate this process through the Secretariat of the Interior, placing both the Office of the High Commissioner as well as the Liaison Committee of civil organisations, who had been key in the elaboration of the Assessment, in a completely marginal role.

A lack of clarity in the issues included

Although the proposal for the National Human Rights Programme includes structural reforms, and one of the main reforms will be in the judicial system, on March 29, 2004, Fox sent to Congress a proposal to reform the Judicial System and to reform the Public Security System outside of the framework of the National Human Rights Programme and of the Assessment itself. At the same time, on April 26, he sent a project of constitutional reforms in the area of human rights (see Focus article: *"Agreements on Human Rights Reform are not Fulfilled"*). Both projects gather in a very limited manner some of the recommendations issued in the Assessment. However, since they were presented as being "the State Reform in the area of human rights" they may marginalize these issues within the National Human Rights Programme, as well as limiting the possibilities for a more profound reform.

Conclusion

The Liaison Committee, apart from presenting a proposal for the methodology, has insisted on the need of joint training-government and civil society- in the area of public policies and human rights, as an important part of the process of elaborating the National Human Rights Programme. The government has accepted this, but since March it has delayed establishing a date for said training to take place. It is necessary to recognise that there is much reticence to the issue of human rights within the different Secretariats of the State that participate in the elaboration of the NHRP (with the

exception of SEGOB and the Secretariat of Foreign Relations). Therefore, putting on paper that public policies will be elaborated from a human rights perspective is insufficient, rather there is a need to guarantee that the public policies that are designed will truly have as an objective the population's effective enjoyment of their human rights.

Consequently, unless measures are taken to address its current limitations, there is a great risk that the National Human Rights Programme will end up merely being a list of activities that each office indicates it will carry out and that include somewhere in their text the term "human rights", and in a series of proposals for reforms, good or bad, that with the absence of real participation, will remain as proposals without there being the sufficient pressure necessary to approve them.

Agreements on Human Rights

Reform are not Fulfilled

At the invitation of the Secretariat of the Interior (*Secretaría de Gobernación*, SEGOB), several civil organisations sustained a dialogue for more than a year with the Human Rights Office of said Secretariat for the elaboration of a proposal for constitutional reform in the area of human rights, in what later became the Working Group on State Reform in the Commission on Government Policies in the Area of Human Rights. During this time, intense discussions were carried out with SEGOB to finally reach agreements on an initiative, which, while not representing the integral reform that we as civil organisations desired, opened the door to a process to place the international human rights standards within the Mexican Constitution.

Unexpectedly, on April 26, 2004, president Vicente Fox presented an initiative that moved away from the spirit and word, not only of the civil organisations' initial proposals, but also of the final proposal that was agreed upon in the Working Group on State Reform with SEGOB. This act marginalized the dialogue process that civil society organisations and the federal

In this regard, the government began a process in which it assumed the responsibility to establish mechanisms to dialogue with civil society organisations; but where it continued to disregard the agreements that were reached through said mechanisms. The initiative presented by Fox is one example of this lack of commitment. With this reform, the Federal Executive put into question its credibility, before the Mexican society and the international community, regarding its discourse in the area of human rights and the commitments it assumed upon signing the Technical Cooperation Agreement. The Executive also put at risk the relationship it established with human rights organisations who were counting on participating in the joint construction and promotion of profound changes to the model and practices of the State that are not consistent with democratic ideals.

While it is true that the content of the initiative that was presented by Fox addresses aspects that society has demanded from the government for years, the actions of the executive regarding civil organisations

Federal Law for Radio and Television, where after committing to defend and promote before the Legislative Branch the initiatives that were constructed through a dialogue with the sectors involved- labour organisations and unions, indigenous peoples and other organisations- these commitments were ignored.

Other clear examples that form part of the double discourse in the area of human rights that the current administration has maintained are the reform of constitutional article 133, that includes the status of international treaties in relation to national law, and the presentation of the initiative to reform the judicial system. In the first case, after months of dialogue between governmental offices, academic sectors and civil society organisations, a consensus was reached that satisfied all of the sectors; however, the Executive Branch did not present any initiative in this regard, arguing that the principles that were agreed upon would be reflected in the proposal that was recently presented by president Fox, which was not the case.

In regards to the judicial system, president Fox recently presented an initiative to reform the judicial system outside of the framework of the Assessment on Human Rights elaborated by the United Nations Office of the High Commissioner for Human Rights in Mexico, where the recommendations in this area are a central aspect of the assessment. As the reform is outside of the framework of the Assessment, it also is outside of the framework of the elaboration of the National Human Rights Programme (NHRP), which will come out of said assessment. In spite of the fact that civil organisations have struggled for a reform of the judicial system that would guarantee the fulfilment of human rights, and that they have been in a dialogue with SEGOB on this manner, they were not consulted in the construction of this proposal.

These events are particularly serious given that this mechanism of dialogue is also what will be used to construct the National Human



Press conference with members of the Liaison Committee regarding the project for constitutional reform in the area of human rights.

government had implemented, while also affecting the confidence in the dialogue mechanisms that the federal government had proposed in order to discuss issues related to human rights.

repeats what has occurred with other important human rights initiatives. This is the case with projects such as those in labour reform, the constitutional reform on indigenous issues, and the reform of the

Rights Programme, and given the current results, what will be decided in this dialogue will not be reflected in the commitments assumed by the government.

When signing the initiative in the area of human rights, president Fox indicated, “No one can today accuse the government of democratic change of violating human rights...” This is concerning given that this limited initiative was signed at a moment when important evidence exists that contradicts this assertion, which can be found in the Assessment as well as in the numerous complaints received by the National Human Rights Commission and the international human rights bodies. Therefore, it would appear that the presentation of said initiative- due to its content as well as the discourse used- is merely a way of trying to improve the government’s image so that it can present itself as a government that respects human rights.

In regards to the reform initiative that was presented, the agreement reached with the organisations was that the international human rights instrument would be elevated to the constitutional level. In the presentation of motives for the initiative, Fox indicates, “If the present initiative is approved, a long discussion regarding the reach of the protection of human rights through individual guarantees **will undeniably be closed**, and the plan for the protection of human rights with full respect for **the supremacy of the internal judicial order** will be strengthened.” Hence, this initiative is contradictory to what had been agreed upon (see the Comparative Table), as it only puts “human rights” on the same level as “individual guarantees”, while also limiting everything to what is recognised specifically in the Constitution.

In light of the rejection of civil organisations to the way in which the initiative of reform was presented- not complying with

agreements and for the limitations of the proposal- the Secretary of the Interior, Santiago Creel, promised the organisations, amongst other things, to create mechanisms that would permit the National Human Rights Programme to include those aspects that were left out of the initiative for constitutional reform presented by the president, for which SEGOB will revise and design a strategy with the civil society organisations to promote common agreements related this reform.

Meanwhile, the civil organisations that have participated in this dialogue with the government, including the Centre PRODH, have conditioned the continuation of this dialogue to the completion of the former and other commitments assumed by the Secretariat of the Interior regarding the National Human Rights Programme.

Comparative Table 1

Proposal agreed upon in the Working Group on State Reform of the Commission on Government Policies	Initiative signed by Fox and presented before Congress	Differences between what was signed by Fox and the agreed upon proposal
<p>Article 1</p> <p>The Mexican State will guarantee the protection of human rights as recognised in the international treaties it has ratified. In the protection of these rights, the interpretation that most favours the individual will prevail.</p>	<p>Article 1</p> <p>Human rights are recognised by this Constitution and their protection will be carried out in the terms it establishes.</p>	<p>The elimination of the guarantee to protect the human rights recognised in the treaties (affecting their hierarchy).</p> <p>The suppression of the principle of the most favourable interpretation.</p> <p>The recognition of “human rights”, but without a change in their actual status, given the form of protection “in the terms established in the Constitution.”</p>
<p>Article 15</p> <p>No modification was agreed on.</p>	<p>Article 15</p> <p>The authorities will protect the human rights recognised in the international treaties and in the other dispositions of Mexican legal order in accordance with that established in this Constitution.</p>	<p>The final part of this article makes the reform inoperable, given that while the obligation of the authorities is explicit, remitting to “that established in the Constitution” (as in Article 1), allows any authority to argue the non-fulfilment of a human right established in an international treaty because it has less hierarchy than the Constitution (the argument usually used), in such a way that the authorities remain under the same regime.</p>
<p>Article 103</p> <p>[The federal courts shall decide all controversies that arise]</p> <p>I. Out of laws or acts of the authorities that violate individual guarantees or the human rights contained in the international treaties ratified by the Mexican State.</p>	<p>Article 103</p> <p>I. Out of laws or acts of the authorities that violate individual guarantees or human rights;</p>	<p>The reform eliminates the possibility to begin a proceeding pertaining to constitutional guarantees for human rights violations recognised in the international treaties.</p> <p>While the reform includes the possibility to begin a proceeding pertaining to constitutional guarantees for violations of “human rights,” this should be interpreted in agreement with the formulation of Article 1. As Article 1 does not represent changes in the actual status of human rights, the reform of Article 103 also does not represent substantial change.</p>
<p>Article 33</p> <p>Foreigners are those who do not possess the qualifications set forth in Article 30. They are entitled to the guarantees granted by Chapter 1, Title 1, of the present Constitution; but the Federal Executive shall have the exclusive power to compel any foreigner whose remaining he may deem inexpedient to abandon the national territory. To exercise this power, the law will establish a preliminary process, where the right to a hearing will be respected.</p>	<p>Article 33</p> <p>Foreigners are those who do not possess the qualifications set forth in Article 30. They are entitled to the guarantees granted by Chapter 1, Title 1, of the present Constitution; but the Federal Executive shall have the exclusive power to compel any foreigner whose remaining he may deem inexpedient to abandon the national territory immediately for representing a threat to National Security in the cases determined by law.</p>	<p>The reform eliminates the agreed upon proposal to obligate the Executive to follow a preliminary process where the right to a hearing will be respected for any foreigner who is compelled to abandon the national territory.</p> <p>This is a proposal in the area of human rights that includes the concept of “national security.”</p>

¹This table is an unofficial English translation of the proposals.

Actions Against Freedom of Expression in Mexico

International and regional human rights instruments, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights, recognise freedom of expression as a fundamental human right. However, in spite of the fact that Mexico is a State Party to these instruments, recent events in the country, particularly in the state of Chiapas, illustrate that there continue to be restrictions on the full exercise of this right, limiting the possibilities of journalists and average citizens to freely express their opinions and ideas.

Legal aggressions in Chiapas

In February of this year, the legislature of the state of Chiapas, based on an initiative of the state governor, Pablo Salazar Mendiguchía, approved a set of reforms for the State Penal Code, which went into effect on May 26, 2004. One of the most concerning aspects of these reforms was the reform of articles 164 and 169 of the code which reclassifies the commitment of slander and defamation as a criminal offence, with punishments of a prison sentence, without the possibilities of bail, of three to nine years and a fine of one hundred to one thousand days of minimum wage. These reforms represent a regression rather than a progression in the respect for civil rights, as they are directed at the criminalisation rather than the decriminalisation of these offences and may result in the restriction of the expression of opinions or criticism that journalists and citizens are able to make, using criminal law as an element to dissuade public opinion.

In this regard, Miguel Carbonell and Ernesto Villanueva, jurists who are members of the Institute of Legal Studies of the National Autonomous University of Mexico, consider it to be “absurd” that in Chiapas, the sanctions of prison time for the crime of slander be increased, when this should no longer even exist in the penal sphere (*La Jornada*, February 26, 2004).

Before the reforms went into effect, journalists, human rights and social organisations, and the Human Rights Commission of the State of Chiapas, requested that these reforms be revoked, considering them to be against the human rights instruments recognised by the

Mexican State. In response to their request, governor Salazar stated “there is no turning back: if they want they can turn to the National Supreme Court of Justice or wherever they want, but in Chiapas the offence of slander will be criminally punished.” (*La Jornada*, February 25, 2004).

As a result of these reforms, workers in the media such as those who are members of the Chiapan Journalist Front for Free Expression (*Frente de Periodistas Chiapanecos por la Libre Expresión*) announced that they will seek protection under the federal justice system in order to carry out their work. In this regard, it should be noted that this right is recognised in the Political Constitution of the United States of Mexico itself, which states:

Article 6. The expression of ideas shall not be subject to any judicial or administrative investigation, unless it offends good morals, infringes the rights of others, incites to crime, or disturbs the public order.

Article 7. Freedom of writing and publishing writings on any subject is inviolable. No law or authority may establish censorship, require bonds from authors or printers, or restrict the freedom of printing, which shall be limited only by the respect due to private life, morals, and public peace. Under no circumstances may a printing press be sequestered as the instrument of the offence.

The Chiapan Journalist Front along with other organisations also presented a complaint before the Human Rights Commission of the State of Chiapas, arguing that the reform goes against the right to freedom of information and expression, as well as a complaint before the Inter-American Commission on Human Rights (IACHR). Information on this situation was also sent to the UN Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion.

Current repression

In regards to the current situation in Chiapas, on May 12, 2004, municipal police of Tuxtla Gutiérrez, Chiapas, beat, robbed and humiliated the reporter, Manuel de la Cruz, correspondent of Televisa Radio, collaborator of *Comunicación e Información de la Mujer* (CIMAC) and of the newspaper *El Independiente*, without any apparent

motive. After being subject to several beatings by numerous police officers, de la Cruz was finally released, under the argument that he was no longer under the influence of alcohol and because he was a reporter. In regards to this incident, de la Cruz has presented a complaint before the Secretariat of Public Security of Municipal Transit and Traffic of Tuxtla Gutiérrez, a criminal complaint before the State Attorney General’s Office, and a complaint before the Human Rights Commission of the State of Chiapas, for being a victim of abuse of authority by public servants. Following the attack, four members of the municipal police were detained and are being charged for the crimes of illegal detention, violent theft, abuse of authority and causing injuries to a journalist.

In a previous case, included in the report of the IACHR Special Rapporteur for Freedom of Expression, Eduardo Bertonio, as part of his annual report for 2003, journalist Ángel Mario Ksheratto, author of the column “Fichero Político,” published daily in the newspaper *Cuarto Poder*, was criminally indicted in January 2003 for the crime of defamation, presumably for having denounced acts of corruption in the School Construction Committee of Chiapas. In previous months, Ksheratto reported having been followed on several occasions by vehicles without license plates and of receiving phone calls with death threats. Following his indictment, Amnesty International issued an Urgent Action on the case and expressed their concern that the charges brought against Ksherratto could



PHOTO: CENTER PRODH ARCHIVE / T.G.

have been politically motivated (AMR 41/003/2003). Documents provided by the Attorney General for the state of Chiapas to the Special Rapporteur in 2003, state that in addition to the defamation cases against journalist Ksheratto, 13 other cases against journalists for crimes of defamation from the following media exist: *Diario de Chiapas, Cuarto Poder, La República de Chiapas, El Orbe, Diario del Sur, and Record*. At the time of the issuing of the rapporteur's report, most of these cases were still in the preliminary inquiry stage.

Generalised problematic in Mexico

The recent regressive reforms in Chiapas, directed at criminalising slander and defamation, as well as attacks against journalists, are illustrative of the continued problematic regarding the right to freedom of expression in the country. In this regard, IACHR Special Rapporteur Bertoni included the results of his visit to Mexico, carried out from August 18-26, 2003, in his annual report for 2003, where he indicated in regards to judicial actions:

- While the physical attacks have diminished, it is worrisome to see harassment, through the arbitrary or abusive use of legitimately enacted laws and regulations, such as laws on criminal defamation, or laws that permit subpoenas of journalists to demand that they reveal their sources.
- Practically all the criminal codes of the states of Mexico include criminal defamation laws (statutes on difamación, calumnia, and injuria). The Rapporteur was concerned by information according to which in some states these laws are used to persecute, harass, and/or jail journalists for expressing their opinions on matters of public interest or for criticising the public administration.

- The Rapporteurship considers that to ensure the adequate defense of freedom of expression, the Mexican State, at both the federal and local levels, should amend its defamation laws such that only civil penalties could be applied in cases of insults of public officials related to the performance of their functions, public figures, or private figures involved voluntarily in matters of public interest.

- In the course of this year, the Rapporteurship twice spoke out, through press releases, to condemn the detention of Mexican journalists due to criminal actions initiated against them for the crime of defamation. According to testimony provided to the Rapporteurship, this situation is more intense in local jurisdictions, i.e. in the states of the interior of the country. (paragraphs 197-200).

In regards to these recommendations, it should be pointed out that the states of Guerrero and Jalisco have implemented reforms to decriminalise defamation. However, the reforms in the state of Chiapas go against these recommendations by adding, rather than amending, criminal defamation laws. Recently, the Legislative Assembly of the Federal District also rejected a proposal from the government of the Federal District to decriminalise the offences of slander and defamation.

Conclusion

It is only through the free expression of ideas, the search and dissemination of information, the possibilities to question, to dialogue, to publish and transmit what one thinks, that it is possible to maintain a free society. In this sense, the "Mandate and Competence of the Office of the Special Rapporteur for Freedom of Expression" of the IACHR, states: "In creating the Office of the Special Rapporteur, the Commission

sought to stimulate awareness of the importance of full observance of freedom of expression and information in the hemisphere, given the fundamental role it plays in the consolidation and advancement of the democratic system and in ensuring that other human rights are protected and violations reported; to make specific recommendations on freedom of expression and information to member States to promote adoption of progressive measures to strengthen this right..."

In a society that is considered free and that respects human rights, it is not possible to promote laws that propose self-censure and that become even more inflexible by extending penalties. The State in general, and at its different levels, should have as a function the implementation of measures that stimulate the participation of citizens and of journalists in the free exposure of or search for information, considering this act as an asset, not an obstacle, for democracy. While it is true that the credibility and impartiality of information should be a clear commitment and responsibility of journalists, they should also not be restricted through the use of legal measures, such as condemning the offences of slander and defamation as crimes that should be severely punished. In a government such as that of Mexico, which holds itself up as one which actively promotes and respects human rights, it is evident that many measures still need to be implemented to address the current situation faced by journalists and the average citizen in freely voicing his/ her ideas and opinions and to ensure the full exercise of the right to freedom of expression at the federal, state and local levels.

The Mexican State Receives

Recommendations on Indigenous Issues

In this year, the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, issued his report on the situation of the indigenous peoples of Mexico, after having visited the country from June 1-18, 2003.

At the same time, the International Labour Organisation (ILO), after having processed the complaints lodged due to the incompleteness of ILO Convention 169 in Mexico, has also issued its corresponding recommendations.

Both resolutions, which recommend that the Mexican State implement several urgent measures towards improving the situation of the indigenous peoples of the country, emphasis three important aspects:

1. The revision of the constitutional reform on indigenous rights, using the international treaties as a framework, specifically ILO Convention 169.
2. The need to consult the indigenous peoples and communities, considering their needs and interests, every time an administrative or legislative measure is

planned or designed that could affect or involve them.

3. The protection of indigenous lands, above all other interests.

The Special Rapporteur's Report

The Special Rapporteur's report (E/CN.4/2004/80/Add.2) includes a series of observations, conclusions and recommendations for the Mexican State regarding the situation of the individual and collective rights of the indigenous



Meeting held between members of NGOs and Stavenhagen during his visit to Mexico.

peoples. Some of the most important elements indicated by the Rapporteur that characterise the situation of the indigenous peoples, necessary to understand the context of the subsequent recommendations issued, include:

1. In spite of the Mexican State's long history of pro-indigenous policy throughout the twentieth century, the accumulated setbacks suffered by the indigenous population have "plainly put it at a disadvantage vis-à-vis the rest of the Mexican population" (para. 56) where the indigenous peoples are victims of discrimination and social exclusion, with low social and human development indices. Undoubtedly this affirmation illustrates the failures of the pro-indigenous policy in the country and of a systematic discrimination promoted from governmental institutions. It also makes it clear that "the problem of the indigenous peoples is not one of high priority for the Mexican State" (para. 62)

2. The constitutional reform of 2001, a late and adulterated product of the San Andrés Accords, collects some aspects of the Cocopa Law (Congressional Commission of Concordance and Peace, Cocopa), but moves significantly away from it in others that are of fundamental importance to the indigenous peoples, which has brought about a generalised rejection of the reform. Furthermore, Congress did not carry out an extensive consultation regarding the constitutional reform, as they should have, in accordance with the commitment acquired through the ratification of ILO Convention 169 (para. 57).

3. The establishment of "Good Government Boards" in regions with communities that are Zapatista bases, in order to strengthen the practice of regional autonomy and establish local bodies for administration and dialogue with Mexican society and the Government, "may doubtless be interpreted as a peace signal on the part of EZLN, opening a window of opportunity in the search for a peaceful solution to the conflict while respecting the human rights of the indigenous peoples. It represents a creative application of the constitutionally guaranteed right of the indigenous peoples to self-determination" (para. 55).

4. Apart from Chiapas, there are other conflictive regions in Oaxaca and Guerrero, where the military and police presence has increased. "These situations have given rise to numerous violations of the human rights of indigenous peoples and communities" (para. 59).

5. "Indigenous people are the most conspicuous and vulnerable victims of human rights abuses in the workings of the judicial system, and are subjected to violations of the right to life and physical integrity, security, due process and individual guarantees. An alarming tendency to treat protest and social dissent as a crime has been observed in the conflicts, to which should be added considerable impunity and corruption in the agrarian, criminal and civil justice system, all of which gives the impression that, despite official rhetoric to the contrary, for the majority of Mexican society the indigenous peoples are expendable" (para. 60).

6. "Discrimination against indigenous people is also visible in the distribution of wealth and public goods and services, the main victims being indigenous women and children (particularly girls), and indigenous migrants in urban areas. The resources earmarked by the Government for development programmes in indigenous regions have always been inadequate, and this makes for low economic, social and human development indices" (para. 61).

In regards to the recommendations, the following stand out:

- "The Special Rapporteur recommends that the National Congress should reopen the debate on constitutional reform in indigenous matters with a view to establishing clearly all the fundamental rights of the indigenous peoples in accordance with existing international legislation and the principles adopted in the San Andrés Accords. He also recommends that the integrity of the lands of the indigenous groups should be protected..."(paras. 64-65).
- "The pursuit of a negotiated peace in Chiapas should be resumed as a high priority item on the domestic policy agenda of the Federal Government". The Rapporteur also recommends that the State should respect the existence of the "Caracoles and Good Government Boards" (paras. 67-68).
- Convention No. 169 should be implemented in all legislation and by all bodies concerned with the rights of the indigenous peoples (para. 70).
- The conservation and protection of the land, territories and resources of the indigenous peoples and communities should take priority over any other interest in the solution of agrarian conflicts (para. 73).
- "Indigenous groups and communities should have priority access to natural resources for the purpose of direct consumption and subsistence, ahead of any economic or commercial interests. Suitable laws governing bio-prospecting in indigenous territories in a manner that respects the cultural and natural heritage of the Indian peoples should be drawn up as swiftly as possible." Likewise, "the indigenous communities should take part in the management, administration and control of protected natural areas in their territories and regions (paras. 79, 80 76).
- "The system of justice for indigenous people should be thoroughly reviewed at the national level, with broad-based and flexible criteria and extensive participation by the indigenous people. Indigenous law (legal custom) should be acknowledged and respected in all judicial bodies where indigenous people or communities are involved and should be incorporated into a new conception of indigenous justice." In regards to agrarian justice, this should also be reviewed "as it affects the collective rights of the indigenous communities and peoples, bearing in mind traditional methods of land use and customary forms of solving conflicts and disputes" (paras. 82, 93, 83).

● “The Government should take urgent steps to disband, disarm and punish armed paramilitary or civilian groups that are operating in indigenous regions.” Likewise, “when the indigenous communities so request, the army should fall back in the environs of indigenous communities; the army presence and activities in indigenous areas should be strictly compatible with its constitutional duties” (paras. 98, 99).

The Centre PRODH also considers it pertinent to add three more aspects to those already elaborated by the Rapporteur.

1. That referring to the need to consult with the indigenous peoples and communities and to consider their needs and interests when an administrative or legislative measure could affect them. This comes from the registry of an increase in the cases in which the Mexican government implements development projects, such as electric dams, without considering the economic, social and cultural situation of the residents, indigenous and / or campesinos, as well as their needs.

2. That related to the federal and state judicial power that should abstain from using the legal system to criminalise or penalise legitimate protests or social dissent.

3. That related to the design, in consultation and with the participation of the indigenous peoples and communities, of a development model- distinct from the neoliberal model- that tends towards the inclusion and open participation of the indigenous, as a way to improve their standard of living and have opportunities for integral development.

The Mexican government’s response to the Rapporteurs report, dated March of 2004, recognises the historical setbacks experienced by the indigenous and details some areas where there has been a lack of resources or complications that have prevented them from having the funds or means necessary to find a solution to this issue. However, we consider these arguments to be insufficient to explain the scarce progress in this area. Likewise, we have observed that in concrete problems or situations that violate indigenous rights, there is a lack of will or knowledge to confront said situation, impregnated in some occasions by discriminatory prejudice. Nevertheless, we welcome the commitment recognised by the government to attend to the situation detailed by the rapporteur and

we hope that the actions to be undertaken, indicated in said response, are reflected in an improvement of the situation of the indigenous peoples and communities and of the country in general.

Report of the ILO Tripartite Committee of Experts

The constitutional reform on indigenous issues, published in 2001, brought with it a subsequent series of actions of inconformity with said reform. The more than 300 constitutional controversies presented before the Supreme Court was just one of these actions. In light of the lack of consultation with the indigenous peoples of the country in the elaboration of the content of the reform, two complaints were also presented before the ILO for violations against ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.

The Independent Union of Workers of the Newspaper *La Jornada*, the Workers Union of the National Autonomous University of Mexico, and the union of Academics of the National Institute of Anthropology and History, were the unions to present the complaints before the ILO, as well as the organisations: the Plural National Indigenous Assembly for Autonomy and the Centre Prodh.

Two and a half years after the complaints were lodged, the Tripartite Committee of Experts issued the corresponding recommendations in April of 2004. In the complaints, two situations were argued: a) the violation of Article 6 of Convention 169, for the failure to consult with the indigenous peoples of the country during the legislative process of the constitutional reform and b) the violation of Convention 169 in its core aspects regarding discrimination, land and territory, justice, apart from the forced sterilization of indigenous women and indigenous migrant workers, amongst others.

Regarding the complaints for the violation of Article 6 of Convention 169, the Committee recommended to the Mexican State:

1. That to develop, specify, or implement constitutional reforms or legislative or administrative measures, be it on the federal or state level, the State do what is necessary so that Article 6 is fully applied in the

adoption of such measures and that upon applying said article they:

- a) Establish clear criteria for representation
- b) Consider (where possible) the proposals of the complainants regarding the characteristics that a consultation should have in order to be effective.
- c) Determine mechanisms for consultation with the aim of reaching an agreement or consensus regarding the proposed measures, independently of whether they are achieved or not.
- d) Consider, in determining the mechanisms for consultation, the indigenous peoples’ values, ideas, times and systems of reference and even ways of viewing consultation.



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Regarding the complaints made due to the violation of core aspects of the Convention, the following recommendations were issued to the Mexican State:

1. Upon beginning different development plans and programs for the indigenous,

ensure that they are done so that they enter into the framework of an action that is coordinated and systematic and that includes the full participation of the indigenous peoples.

2. Look for adequate solutions to the land problem. In this specific case, it is requested that the Mexican State inform the ILO on:

- a) The functioning, in practice, of the procedures to resolve the indigenous peoples' claims to land.
- b) The way in which the rights to property and possession of the traditionally occupied lands of the interested peoples are recognised.
- c) The measures adopted to protect the right of the indigenous peoples to use land that they do not exclusively occupy, but which they have traditionally had access to for their traditional activities and subsistence.

The ILO Administrative Council has adopted the recommendations issued and the Committee of Experts on the Application of Conventions and Recommendations will be in charge of monitoring the Mexican State's compliance with them.

An important part of the recommendations is that related to the study that the Committee of Experts on the Application of Conventions and Recommendations will

conduct regarding the compatibility of the constitutional reforms approved in 2001 with the ILO Convention 169.

While the ILO's resolution does not alter what is already established in the Constitution on indigenous matters, a reform that was challenged due to its incompatibility with the San Andrés Accords, the Cocopa Law, and ILO Convention 169, there is now the possibility that in the future, when the Mexican State aims to carry out a legislative reform or another administrative measure that involves the indigenous peoples, that it will be done in consultation with them, establishing with the indigenous peoples mechanisms of consultation and considering their values, ideas, times and systems, and not the political interests and time-frames that may exist on a national level.

The recommendations issued by the ILO should be considered as an important precedent as the bases established for the right of consultation of the indigenous peoples, contemplated in Article 6 of Convention 169, constitute the minimum State obligations on this issue. It is hoped that the Mexican government accepts the recommendations and implements steps to address them, as it is only through this that we will be able to speak of true progress and will to attend to the demands of the indigenous peoples in Mexico.

Special Prosecutor's Office for Political and Social Movements of the Past Fails to Show Concrete Results

One of the steps taken by the Fox Administration that has received international recognition was the creation in November of 2001 of the *Special Prosecutor's Office to Provide Attention to Events that Probably Constitute Federal Crimes Committed Directly or Indirectly by Public Servants Against Individuals Connected to Social and Political Movements of the Past* (Special Prosecutor's Office) that was established in response to a report elaborated by the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) on this issue.

The Administration presented the Special Prosecutor's Office as a solution to investigate crimes, not only regarding disappearances but also, given the lack of

clarity of the Prosecutor's mandate, regarding all of the past human rights violations committed during the past *sexenios* (six-year presidential terms), and in fact, this office was presented as a better solution than the creation of a Truth Commission. Two and a half years have passed since the Special Prosecutor, Ignacio Carrillo Prieto, assumed office and yet there are still no concrete results in regards to the investigations. To date, no indicators exist that would allow one to determine how the cases are advancing nor the probabilities of satisfying the basic rights of justice and truth regarding the disappeared.



Actions of the Special Prosecutor's Office

In February of 2003, the Centre Prodh, the Diego Lucero Foundation, the Committee of Mothers of Political Prisoners and the Disappeared of Chihuahua, and the Association of Family Members of Individuals Detained and Disappeared, presented the report "Truth and Justice: Pending Files in the Special Prosecutor's Office" regarding the work of the Special Prosecutor's Office a year after this office was established.¹ A follow-up to this report, summarized below, presented to the Inter-American Commission on Human Rights (IACHR) in March of 2004, illustrates that many of the difficulties and failings of the work of the Special Prosecutor's Office continue to persist. These problems include:

1. The Special Prosecutor's Office, as an office that comes from the Federal Attorney General's Office (*Procuraduría General de la República*, PGR) does not present the possibilities of being a body that has the independence and effectiveness necessary to investigate the human rights violations that occurred in the past. On the one hand, this is due to the limitations of the Mexican judicial system itself, and on the other, to the limited reach that a ministerial investigation can have regarding satisfying the right to truth, a fundamental obligation of any State in cases of the forced disappearance of persons. Likewise, the Special Prosecutor's Office continues to work based on a mandate that is not restricted to the historical time-frame that it should investigate, while also assuming the investigation of cases that should be the responsibility of the PGR.

2. There continue to be a series of administrative deficiencies in the work of the Office which include: a lack of resources, insufficient and poorly trained staff to carry out the investigations; a lack of training programmes and the inexistence of personnel from other disciplines to jointly assist in the historical and social aspects of the investigations.

3. The Special Prosecutor's Office does not base itself on the classification and support of international human rights laws when faced with the absence of adequate national normative standards. While several international experiences and criteria emitted by the Inter-American System as well as the United Nations exist regarding forced disappearance, the Special Prosecutor's Office insists on basing its actions on the classification of crimes within the Mexican penal legislation that existed at the time of the so-called *dirty war*. Therefore, the office bases its work

presented before legal authorities on the crime of illegal detention and not forced disappearance.

4. There continues to be a lack of active investigation and of collecting evidence by the office, leaving the presentation of evidence, in most cases, in the hands of the family members of the victims and their legal representatives.

5. Military jurisdiction to investigate crimes against humanity where members of the military participated persists, increasing the possibilities for impunity in these cases given the military judicial system's lack of independence and impartiality. This jurisdiction also represents a contradiction in the creation of the Special Prosecutor's Office, which was established to investigate crimes of the past, since that related to the military's participation in these events is not part of the investigation

Events occurring in the past months also illustrate that if the Mexican State does not alter the political and legal environment in which the Special Prosecutor's Office conducts its labour, its existence and future will continue to be discouraging.

Important developments

On November 5, 2003, the Supreme Court of Mexico handed down a unanimous decision revoking the decision made by the Fourth District Judge in Monterrey, Nuevo Leon which had denied issuing detention orders against Miguel Nazar Haro, Luis de la Barreda Moreno y Juventio Romero Cisneros, for the illegal detention, through kidnapping (stated as such because disappearance is not classified as a crime), of Jesús Piedra Ibarra in 1975, arguing that the statute of limitations had expired for the crime. The judges of the Supreme Court established that in the specific case of Jesús Piedra Ibarra, the crime of kidnapping had not passed the statute of limitations and moreover, that this had not even begun for this crime, affirming that penal action in the case of illegal detentions through kidnapping remains valid while the victim remains disappeared. While this act is important in advancing in the investigations of the Special Prosecutor's Office, much still needs to be done so that the Supreme Court assumes solid criteria regarding the crimes of the past.

On February 18, 2004, Nazar Haro, one of the main individuals implicated in the crimes of the *dirty war*, was detained after fleeing justice for over two months, while de la Barreda and Romero remain fugitives from justice. However, on April 14, Miguel

Nazar Haro was granted an *amparo* against the arrest warrant issued for his involvement in the disappearance of Jesús Piedra Ibarra. The judge issuing the *amparo* stated that there was not enough evidence in the preliminary investigation to initiate a trial process against Nazar, suggesting possible failings in the investigation and leaving the Special Prosecutor's office with only one additional legal recourse in order for Nazar Haro to be judged and condemned for the disappearance of Piedra Ibarra.

In examining the deficient actions of the Special Prosecutor's Office in the past few months, the lack of attention of the Office to the cases that have been denounced is also evident. This was seen, for example, in the murder of one of the main witnesses of the investigations of police and military agents involved in the torture and forced disappearance of hundreds of residents of the sierra in the state of Guerrero. Horacio Zacarias Barrientos Peralta, who was an eyewitness to forced disappearances, as confirmed by the vice president of the Association of Family Members of Individuals Detained and Disappeared, Tita Radilla Martinez, was tortured and murdered on November 26, 2003. This occurred less than 24 hours before the Fourth District Judge in penal matters in Acapulco, Guerrero, emitted the first apprehension order against one of the repressors of the *dirty war* in Guerrero, the ex-commander of the Judicial Police of this state, Isidro Galeana Abarca. Furthermore, Galeana fled from justice upon hearing of the apprehension order against him and to date the PGR has not complied with said order nor do they know of his whereabouts.

It should also be noted that the report issued by the Special Prosecutor's Office on its work from January 2002-December 2003, once again is limited to a numerical account of its activities with no real advancements in the investigations. This indicates that even though the staff and resources for the office have increased, it still lacks a methodology for criminal investigations regarding human rights abuses and therefore its work is unorganised and ineffective. At the same time, the Special Prosecutor's Office stated before legislators in May 2004 that it has faced governmental resistance to its work, including "deficiencies in the results of the Federal Investigation Agency (*Agencia Federal de Investigación*), a situation which should be resolved as those accused should promptly be apprehended" (*La Jornada*, May 20, 2004).

Finally, it should be noted that the government has maintained the reserve it placed on article 9 of the Inter-American

Convention on Forced Disappearance of Persons when the Senate ratified it in December 2001. While article 9 establishes that forced disappearances cannot be investigated by special jurisdictions, in particular military jurisdiction, the Mexican government's reserve maintains the investigations within military jurisdiction, going against this article as well as the recommendations made to them by various international human rights mechanisms.

Conclusion

Knowing the truth about the events, the identification and sanction of those responsible, the localization of the disappeared, the reparation of damages caused by the State and the implementation

of measures of non-repetition, are the obligations of the Mexican State in regards to the events that occurred during the *dirty war*. However, the work carried out by the Special Prosecutor's Office in the two and a half years since its creation has not reported said results.

The lack of an adequate legal framework in regards to forced disappearance, in accordance with international human right standards, and the failure of the Mexican State to comply with its obligations before the international community regarding the grave violations committed during the 1960s, 1970s and 1980s, maintain the perpetrators of these acts in impunity, while justice is not achieved for the family members of the victims.

If the limitations mentioned above persist, and if the Mexican State does not at a minimum modify the existing legal framework in regards to forced disappearance, remove the reserve on the Inter-American Convention, and clearly establish the mandate and the time-frame of the Special Prosecutor, the right to justice for the victims, their family members and society in general will be limited to the mere act of an initial arrest and subsequent release of those that are probably responsible for these acts, putting aside the right to truth.

¹ The full text of the report in Spanish is available on Prodh's web-page at: <http://www.sjsocial.org/PRODH>

News Briefs

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CNDH Recommendation to Investigate Members of the Military

In April 2004, the National Human Rights Commission issued recommendation 23/2004, directed at the Military Attorney General, Jaimes Antonio López Portillo Robles Gil, to investigate those responsible for acts of military aggression against two groups of migrants. In the first case, on June 14, 2002, 23 migrants tried to illegally cross the border into the United States. Members of the military discovered the vehicle and ordered them to stop. The driver did not obey this order and instead increased speed, as a result soldiers opened fire on the vehicle, injuring many of the migrants. The CNDH accredited that in this case the soldiers used their firearms against unarmed individuals and that there was an excessive use of force, going against military legislation.

In the subsequent case, on February 4, 2003, members of the military detained a truck carrying 13 migrants who were attempting to cross into the United States in the area of Rumorosa, Baja California. The soldiers hit the migrants and broke the rib of one individual, they also put a plastic bag around the head of another so that he would confess that he was a "pollero" (migrant trafficker). When the migrants went to denounce the acts before the Military Public Minister's Office, they identified six members of the Army as responsible.

The Military Attorney General has accepted the CNDH's recommendation and stated that they will begin a formal investigation into both cases.

Campeño Ecologists' Case is Admitted before the IACHR

On March 12, 2004, the petition that had been submitted before the Inter-American Commission on Human Rights (IACHR) regarding the human rights violations committed against the campeño ecologists Rodolfo Montiel and Teodoro Cabrera was admitted. This petition was fundamentally based on the following violations: the right to personal liberty, the right to personal integrity, and the rights to a fair trial and judicial protection.

This admission opens the possibility, for the first time, for an integral solution to the case. This solution may be reached with the Mexican State if it assumes its responsibility and guarantees the indemnification and reparation of the human rights violated in the case. To reach this agreement before the Commission, a friendly solution to the case will be carried out, where the Mexican State should respond and attend to the following demands: the recognition of the innocence of the campeño ecologists, absolving them of all of the crimes they were accused of; integral reparation of the damages cause to Rodolfo Montiel and Teodoro Cabrera, for the torture that they received as well as the illegal deprivation of their physical liberty for a year and a half; the investigation and sanction of those members of the military who were involved in the detention of the two men, as well as the investigation and sanction into those who tortured them; and the adoption of measures of non-repetition, directed at guaranteeing the full exercise of the right to defend human rights, as well as to defend the environment.

It is only through the commitment of the Mexican State to comply with these points that a friendly resolution will be reached and we will be able to say that the case of the campeño ecologists has been fully resolved based on the criteria of full access to justice.

Glossary

Amparo, There are two different amparo actions that can be filed to challenge the constitutionality of an official act or a law that violates individual rights. Generally an amparo is filed either to cease or prevent an act of authority, such as a detention.

CNDH, *Comisión Nacional de Derechos Humanos*, National Human Rights Commission. Government body set up in 1990 to investigate human rights abuses.

COCOPA, *Comisión de Concordia y Pacificación*, Peace and Concord Commission of the Mexican Congress. Formed in 1995 to address the conflict in Chiapas.

Dirty War, A term referring to the time period of the end of the 1960 until the beginning of the 1980s where the government applied a repressive policy that included numerous forced disappearances against leftist activists and guerrilla movements.

EZLN, *Ejército Zapatista de Liberación Nacional*, Zapatista National Liberation Army. Armed indigenous opposition group, first appeared in January 1994 in Chiapas.

Fiscalía Especial, Special Prosecutor's Office. A prosecutor's office created and designated to investigate specific crimes.

PAN, *Partido Acción Nacional*, National Action Party, centre-right party of President Fox.

PGR, *Procuraduría General de la República*, Federal Attorney General's Office, has federal jurisdiction for investigating crimes.

PGJDF, *Procuraduría General de Justicia del Distrito Federal*, Attorney General's Office of the Federal District, has local jurisdiction for investigating crimes.

PRD, *Partido de la Revolución Democrática*, Party of the Democratic Revolution, centre-left opposition party.

PRI, *Partido Revolucionario Institucional*, Revolutionary Institutional Party, which held power for 71 years until defeated in the July 2000 elections.

PT, *Partido de Trabajo*, Labor Party.

PVEM, *Partido Verde Ecologista de México*, Mexican Green Party.

San Andrés Accords, signed between the Mexican Government and the EZLN in February 1996 in San Andrés Larráinzar. With the passing of the constitutional reform on indigenous culture and rights, these agreements have been pushed aside by the federal government.

PRODH was created in 1988 as an institution dedicated to the promotion and defence of human rights. It has four programs of work: integral defence, educational processes, monitoring, and advocacy; and four work areas: international relations, communication, organisational development, and the centre of information. PRODH has consultative status with the United Nations Economic and Social Council.

PRODH works with groups throughout Mexico to consolidate human rights protection. Since its founding, it has given effective support and solidarity to groups and persons who have suffered injustice, poverty, and marginalisation.

For further information or to join PRODH's membership, please contact:

Miguel Agustín Pro Juárez
Human Rights Centre

Serapio Rendón 57-B
Col. San Rafael, Mexico DF 06470

Tel/Fax: (5255) 5546 8217,
5566 7854, 5535 6892

Email: prodh@sjsocial.org

Web page: <http://www.sjsocial.org/PRODH>

Director: David Velasco
Contributors to this issue: Patricia Fernández, Emma Maza, Maureen Meyer, Claudia Ordóñez and Aurora de la Riva.
Editor: Maureen Meyer
Designer: Tania Tamara Gómez

Miguel Agustín Pro Juárez
Human Rights Centre, A.C.



Centro de Derechos Humanos
Miguel Agustín Pro Juárez, A.C.

FOCUS
Human Rights in Mexico

Serapio Rendón 57-B Colonia San Rafael México, D.F. 06470 México