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# FOCUS

## Human Rights in Mexico

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### Setbacks in the System of Public Human Rights Commissions

Three years after the beginning of the administration of President Vicente Fox, half of his term, the human rights situation in Mexico has not experienced profound changes. The articles that we present in this edition of *Focus* provide examples of the few advanced made on this issue.

At the same time, the System of Public Human Rights Commissions, the biggest in the world, is experiencing setbacks in the little advancement that has been made in their intent to be more independent and autonomous. The most recent naming of presidents for several state human rights commissions illustrates this situation. On February 4, 2004, the individual named as the President of the Human Rights Commission of the State of Querétaro was an official of the state government. In Jalisco, Guadalupe Morfín was not re-elected as the president of the Human Rights Commission of the State, as was the case in Querétaro, as a result of her work that criticised the governor of the state. In Veracruz, the governor Miguel Alemán demanded that the former president of the State Commission resign and promoted the Secretary of the Interior of the state as the president of the Commission. In Baja California, the local congress elected as president

an individual who had coordinated the governor's guards and who was also an official of the judicial police. In Puebla, the congress elected an undersecretary of justice, who during the former presidency of the Human Rights Commission of Puebla had received several recommendations by the Commission for human rights violations. In the case of Yucatán, given the lack of an agreement amongst the different parties of the congress, the president of the Commission was elected by a drawing and not through an objective evaluation of his qualifications.

These setbacks and the lack of advancements are also reflected in the National Human Rights Commission, whose head, Dr. José Luis Soberanes, has hindered in several ways the Technical Cooperation Agreement between the Mexican government and the UN High Commissioner for Human Rights, amongst other reasons because the agreement includes a revision of the functions of said institution. In this context, it is concerning that this administration, which has most used the human rights discourse, has not achieved an improvement in the nation system of protection of human rights

### The Technical Cooperation Agreement is at Risk

Perhaps one of the most important steps that Mexico has taken in the area of human rights was the signing of the Technical Cooperation Agreement between the UN Office of the High Commissioner for Human Rights (UNOHCHR) and the Mexican government in December 2000. A main factor leading to the signing of the agreement was the work of civil human rights organisations.

As has been reported in previous articles in *Focus*, the main objective of the Technical Cooperation Agreement was the elaboration of an Assessment on the Human Rights Situation in Mexico to assist in the identification of the structural causes that produce human rights violations, as well as to identify the needs and possible actions to improve the situation. In a second moment of the Agreement, said Assessment would also serve as a basis for the elaboration of the National Human Rights Program.

This past December 8th, Anders Kompass, the representative of the High Commissioner for Human Rights in Mexico, presented the Assessment on Human Rights to President Fox in the presence of most of the government's secretaries, the human rights community and members of the international community based in Mexico.

The development of the assessment on human rights involved efforts by civil organisations, citizens, social movements, academics and many other individuals in order to participate in the process.

### Obstacles in the elaboration of the Assessment

Several obstacles were present in the elaboration of the Assessment, such as the opposition of the president of the National Human Rights Commission (CNDH), José Luis Soberanes, to the Technical Cooperation Agreement.

Likewise, in the beginning, the Secretariat of the Interior (*Secretaría de Gobernación*) was not interested in being involved in this process, given that the Secretariat of Foreign Relations (*Secretaría de Relaciones Exteriores*, SRE) was the one who had negotiated the Agreement.

On the other hand, halfway through the process of elaborating the Assessment, SRE decided to eliminate the Undersecretariat for Democracy and Human Rights, which presented many complications to the Assessment process, such as the need for the Undersecretariat for Global Issues, who assumed the work on the Assessment in the Secretariat, to become familiar with the process and recognise its importance.

In the development process of the Assessment, the Liaison Committee of civil organisations, created by the then High Commissioner, Mary Robinson, to serve as a Consultative Committee for the High Commissioner in the framework of the development of the Technical Cooperation, played a key role in encouraging civil society organisations to participate in the process and to overcome some of the obstacles described above.

### Results of the Assessment

This is the first assessment on human rights where, apart from covering all human rights, an extensive participative process in its elaboration was included. In the assessment we do not find big surprises but rather a systematisation of the structural causes that permit the systematic violation of human rights in Mexico.

The elaboration of this assessment was a very important process, not only because of its final result, but also because it meant placing at the centre of the debate of different sectors of society the importance of undertaking an analysis that would explain the structural causes of human rights violations in our country and proposals to address them.

The assessment is made up of seven chapters on: general aspects; civil rights; political rights; economic, social and cultural rights; the rights of women; the rights of indigenous peoples; and the rights of groups in vulnerable and discriminatory situations. Each chapter contains an analysis of the causes that propitiate human rights violations and the presentation of several specific proposals to address these issues.

Amidst this richness, the assessment identifies 31 general and substantive recommendations to comprehensively confront the structural problems related to human rights, based on an analysis of the situation and on several specific recommendations that are presented throughout the document. The following is a summarised version of several of said recommendations:

- Reform the Constitution to incorporate the concept of human rights as its central axis and recognise the superior hierarchy of human rights agreements when these provide more protection to individuals, as well as the regulation of the human rights that are constitutionally recognised.
- Confer autonomy to all public human rights commissions and extend their faculties and competence, while making them more transparent.
- Carry out a permanent national campaign to promote knowledge on human rights, tolerance and respect for diversity.
- Promote a deep transformation of the justice system in order to transform it into an accusatory system that guarantees due process and the limitation of military justice to its own sphere.
- Promote the progressive and verifiable substitution of the Armed Forces in public security tasks.
- Create a public and autonomous body to determine the legal basis of the concessions and permits to operate radio and television stations.
- Guarantee the following rights: freedom to form unions, the free and secret vote of workers, and the right to strike.
- Promote the establishment of programs, institutions and services to prevent, attend to and eliminate systematic gender violence throughout the country and eliminate discrimination against women in the area

of their economic, social and cultural rights.

- Reopen the debate on the constitutional reform on indigenous matters in order to clearly establish the fundamental rights of the indigenous peoples in accordance with the currently existing international legislation.
- Give priority to the preservation and protection of the land, territories and resources of the indigenous peoples and communities over all other interests in the solution of agrarian conflicts.
- Effectively and verifiably integrate social objectives into economic policies and decisions, and adjust them so as to comply with the State's obligations in the area of economic, social, cultural and environmental rights.
- Progressively increase- until it is at least doubled- the proportion of the Gross National Product that is dedicated to the health sector in the public budget.
- Modify the salary policy, looking to reverse, in a period of five years, the deterioration in the purchasing power of the legal minimal wages that has been experienced in the past 25 years.
- Define and put into practice a national food policy that promotes production for the internal market and reduces food dependency and levels of malnutrition.

These recommendations should serve as the indicators to evaluate the will and effectiveness of the government in the task of constructing a State policy in the area of human rights.

### Present risks and challenges for the future

The assessment does not exhaustively cover the complexity and totality of the reality of the human rights situation in the country. Furthermore, it undoubtedly represents a big challenge for civil society as the assessment will serve as the basis for the generation of new debates in the future and it opens up the possibility to establish a tool to update the diverse issues and proposals in the assessment as well as to generate a dynamic process of appropriating the demands present in the area of human rights.

As a following step, it will be necessary to work for the elaboration of state-level assessments that reflect the particularities experienced by each state. This would make it possible, in light of the concrete problems, to formulate the obligations that correspond to local officials in the executive branch as well as those corresponding to the two other branches of power (legislative and judicial) in each of the 31 states and the Federal District, in order to improve the protection for human rights.

The importance of this assessment will be transcending in the way in which a State policy is carried out that ensures the implementation of the recommendations and proposals through a National Human Rights Program, as is indicated in the Technical Cooperation Agreement itself.

The terms of reference of the Technical Cooperation Agreement establish that “the National Program, in comparison with the Assessment, which should be independent, will require the full involvement of the governmental dependencies. Even though its design will be under the responsibility of the national academics, with the support of international experts, the Program should reflect a State policy whose application falls mainly on the government. This in no way excludes civil society from being a partner in the implementation of the Program.”

In spite of this, to date the elaboration process of the National Human Rights Program is unknown. Moreover, the Secretariat of the Interior has insisted that the National Human Rights Program will not be part of the Technical Cooperation Agreement, but rather that it will be a process coordinated by the Mexican government through said Secretariat and with only a very specific support from the UNOHCHR. This goes against the spirit of the Technical Cooperation Agreement, where the coordination of the program in the hands of the Office of the High Commissioner in Mexico would guarantee that the elaboration process of the National Human Rights Program be participative and that said Program attend to the recommendations issued in the Assessment.

The Technical Cooperation Agreement, particularly that regarding the National

Human Rights Program, is an important step towards the reform of the structural causes that permit and lead to human rights violations in Mexico, and it presents the opportunity to adapt policies, legislation and national programs to international human rights standards. Thus, the creation of monitoring mechanisms for the implementation of the National Human Rights Program that include the participation of the representative of the High Commissioner in Mexico and of civil society is essential.

\* A link to the text of the Assessment can be found by clicking on the box “Acuerdo de Cooperación Técnica” on Prodh’s web page at: <http://www.sjsocial.org/PRODH>

## Conflict and Violence

### in the State of Morelos

Tlanepantla, Morelos is now the scene of a growing political conflict. On the night of January 13, 2004, an unresolved dispute over the presidency of the municipality gave rise to clashes within the community and the use of force by public security corps, creating a climate of fear and hostility amongst community members and resulting in numerous human rights violations. As the following information will demonstrate, the lack of a constitutional reform on indigenous issues that recognises and fully guarantees the right of indigenous peoples to elect their authorities by their own customs has provoked a climate of confrontation between the political party system and the forms of political and social organisation practiced by the indigenous. At the same time, the case of Tlanepantla demonstrates that the government of Morelos continues to use the argument of restoring public order and “defending justice” as a way to justify the use of repressive measures against its citizens.

#### History of the conflict

Tlanepantla is a rural municipality located in the northern part of the state of Morelos. It has approximately 5,626 inhabitants of *náhuatl* origin and the town’s main economic activity is the production of prickly pear cactus. Since 1979, Tlanepantla has had the freedom to exercise control over its own governing institutions through the usages and customs system, cohabiting

harmoniously with the federal electoral system. The Municipal President’s election takes place every 3 years, with the PRI party (Institutional Revolutionary Party, *Partido Revolucionario Institucional*) being the only contender in the elections. The agreement among the residents of Tlanepantla has been that after the voting day, the person elected by the Town Council (*Asamblea General*) would register as the chosen candidate.

In 2003, elections took place to elect the new Municipal President of Tlanepantla. For the first time in its history, seven

contenders from different parties were up for election. The PRI had Elías Osorio as its candidate and *Fuerza Ciudadana* (Citizens Force) had Conrado Pacheco, the candidate that had been previously elected by the Town Council. Nevertheless, and violating the will of the majority of Tlanepantla’s population, the State Government gave official recognition to Elías Osorio instead of Conrado Pacheco.

Because the Town Council’s will was not respected, a commission was designated to voice the residents’ discontent to the state



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government. On November 1, 2003, the residents of Tlanepantla occupied the Municipal Palace in order to prevent Elías Osorio from being sworn in as the Municipal President. Since then, the residents have demanded through peaceful means a timely solution to the conflict in Tlanepantla. Amongst their actions was a concrete request to the local congress to determine the disappearance of power in the municipality and the intervention of the state government. The state government and Tlanepantla residents also agreed to begin a dialogue, where sympathizers of Elías Osorio and those in disagreement with him were present. Several concrete agreements came from this dialogue but most of the agreements were only partially completed. On January 5, 2004, these negotiations ended. On January 11, the Town Council established the Autonomous Popular Council of Tlanepantla, declaring Tlanepantla an autonomous municipality and following the example of several other autonomous indigenous municipalities that have been created throughout the country.

### The conflict in Tlanepantla

Within the context described above, on the night of January 13, 2004, a group of approximately 300 people—all sympathizers of Municipal President Elías Osorio, elected by a minority of the residents of Tlanepantla,—were outside the community church. The men were shouting and threatening the people that had actively participated in the election of the Autonomous Popular Council and had defended the freedom to exercise control over their own governing institutions.

During the night, the residents that supported the popular autonomous movement saw hundreds of state public security police in several vehicles and six ambulances arrive in the town. Around 1:30 AM on January 14, there were 100 police cars, trucks, and 800 policemen outside Tlanepantla. The residents thought that this was nothing more than an act of provocation from Osorio's sympathisers, who were in the plaza shouting and making threats, in order to initiate a clash between the residents and thus grant the police an excuse to intervene.

Even though the residents of Tlanepantla agreed not to respond to the provocations, at around 2:30 AM a clash erupted. The majority of Tlanepantla's residents in favour of the Autonomous Council gathered at the municipal palace, the central plaza and watched over the main access into the town.

Shortly after, the policemen arrived at the town's centre and started shooting and other policemen spread tear gas among the population in the plaza. Osorio's sympathizers had full communication with the policemen gathered at the plaza and some of them facilitated the police's entrance into the town. During the conflict, many community members fled to other communities or hid in the countryside.

One woman in the community related to members of the Centre Prodh that during the night, "we saw how they were chasing someone and shooting at him, so we thought it better to hide in the field until dawn [...]. At around 11AM a young man that had gone home to get food told us that the police were performing house searches, so we decided to stay [in the field]. Afterwards,



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we heard a helicopter and we ran. While we were running to the highway, a police car that was far from us, tried to shoot at us, but it was not able to reach us, so we arrived at San José [a neighbouring community]."

As a result of the violent acts perpetrated at dawn on January 2004, Gregorio Sánchez Mercado was killed from a shot in the mouth and many other residents were wounded. The police also forcefully entered and searched many houses causing damage to property and in some cases stole money and personal documents. In the days following the incident the police continued to search in the countryside for residents who had fled the community.

On January 14, 24 people were detained and taken to Attorney's General Office of the state of Morelos, two of them were minors and several of them were held incommunicado for approximately 16 hours. Following this, several other individuals were also detained. The state police station began the preliminary investigation against them for the crimes of mutiny, mob activity, injuries and their results, against members of the State Preventative Police and damages to private property for setting fire to a police car from Tlanepantla's municipality. Most of the detainees stated that they had been detained in their homes or on the road without the police having any detention orders, some of them reported that they had been beaten and some were forced to kneel on the floor for three to five hours in the Attorney General's Office.

### The Government's response

During the time in which the residents of Tlanepantla have struggled to defend their political rights, the government's discourse both at the federal and state level has been contradictory, inconsistent and provocative.

At the beginning of the conflict, state authorities argued that external agents (e.g., political parties, social organisations or student leaders) were responsible for instigating the residents of Tlanepantla. After the brutal eviction of the autonomous council, the governor of Morelos, Sergio Estrada Cajigal, stated that the rule of law had been re-established in the area. He

confirmed that Elías Osorio requested the eviction and that he himself had given orders to carry it out; Elías Osorio has denied such attributions. The Secretary of Public Security, Sebastián Izunsa Gutiérrez, has also confirmed that he gave the orders for the eviction.

Apart from ordering the eviction, the governor has not abided by his word as on January 21 he agreed to suspend all detention orders against members and sympathizers of the Autonomous Council but the following day arrest warrants were issued against 20 Tlanepantla residents who had been detained on January 14. These residents were charged with arson, mutiny, and attacks against the main communication routes.

At the federal level, the Secretary of the Interior, Santiago Creel, stated that the Government would not allow any new forms of self-rule government. The National Action Party's (*Partido de Acción Nacional*, PAN) leader, Luis Felipe Bravo Mena, applauded the actions taken by Estrada Cajigal.

The lack of a coherent government strategy—a case of double standards—evidences the government's lack of understanding and interest in managing the conflict in Tlanepantla. Moreover, it shows the lack of political will to resolve the conflict through peaceful means, leading to more instability and a break-up of the social fabric in the community. It is unfortunate that officials continue to give excuses such as the ones presented above to justify the use of violent means and repression against a social movement like the one in Tlanepantla. The testimonies gathered by the Centre Prodh point to a clear tendency to weaken and divide Tlanepantla's residents.

Within this context it should be stated that the current administration of the state of Morelos, under the charge of Sergio Estrada Cajigal, has been characterised as responding with violence and an excessive use of public force to the demands of various sectors of the population. There is a clear tendency to put the economic interests of a few wealthy sectors ahead of the legitimate interests of the majority of the population. In his two years in office, Governor Estrada Cajigal, following the pattern established by former governors, has conducted 7 acts of violent displacement. In 2001 alone, Estrada Cajigal's first year as governor, the Human Rights Commission of the State of Morelos received 1,569 complaints for human rights abuses in the state.

### Human rights violations in Tlanepantla

Given the events that occurred at dawn on January 14 in the municipality of Tlanepantla, the Centro PRODH was able to confirm the existence of gross human rights violations against Tlanepantla residents. Collectively or individually, the residents have been injured in some way (e.g. physically, psychologically, emotionally), and several have even lost their homes and workplaces. Amongst the human rights violations against the residents of Tlanepantla are: the right to freedom of election of governing officials in accordance with their own customs and usages; the right to personal liberty and legal security; the right to life; the right to integrity and personal security; the right to privacy and the right to freedom of expression. At the same time, since many residents have been unable to return to their lands the rights to work and to food have also been violated and given the closure of the school during the first few days of the conflict, the right to education was also violated. Even though some schools reopened on January 19, only a few children have assisted given the climate of hostility and fear in the community.



Similarly, the consequences of the acts perpetrated by police agents under the orders of the state governor, are the following: the death of Gregorio Sánchez Mercado; 24 detainees, among them one woman and two minors; a number—still unknown—of people injured and wounded by firearms; a number of disappeared persons; and approximately 1000 (among

them children, women, men, and elderly) displaced to neighbouring towns. In addition, police agents remain in Tlanepantla, a fact that prevents the emergence of conditions to re-establish ordinary life.

### Conclusions and Recommendations

Given the acts detailed above, it is evident that the current administration of Sergio Estrada Cajigal has perpetuated the actions of past administrations from the PRI, which have been able to use the law as a tool to repress social movements of the residents of the state of Morelos. The conflict also evidences the inadequacy of the current constitutional reform regarding indigenous matters, shows the lack of institutional channels to address the collective rights of indigenous populations, and illustrates the administration's lack of political will to establish institutional communication lines to address society's demands.

At the publishing of *Focus*, there was still no solution to the conflict in Tlanepantla. Police presence in the community persists and displaced members of the community have refused to initiate a dialogue with the

municipal president Elías Osorio and the state government because they do not feel that Osorio and the government have the "political will" to enter into a dialogue. In light of this, the Centre Prodh believes that in order to reach a solution to the conflict the following recommendations should be considered:



- That the state Government adopt the necessary measures to provide a favourable environment that will allow for a peaceful return of the displaced peoples.
- That the state Government, in coordination with federal authorities, call for and secure a non-aggression pact between the conflicting parties in order to guarantee a peaceful existence in the community of Tlanepantla.
- That the state Government order the immediate withdrawal of all security forces occupying the municipality of Tlanepantla.
- That the state Government guarantee the people of Tlanepantla the freedom to

exercise control over their own governing institutions under their own usages and customs.

- That the state Government generate true conditions to foster dialogue in equal conditions and in accordance with the just demands of the will of the town of Tlanepantla.
- That all of the people processed be absolved of the crimes that they have been accused of.
- That a complete and thorough investigation take place immediately to investigate the events of January 14 and the subsequent days in order to clarify the

events, and identify and punish those who are responsible.

That a full reparation and compensation of damages to those affected during the conflict and their family members be ensured. In addition, measures to avoid repetition should take place.

state.

## 2003: A Continuation of Repression and Political Violence

An analysis of the policies adopted under the administration of Vicente Fox during the first three years of his presidency illustrate that the governmental policies that persisted under the regime of the Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI) have not experienced substantial changes. In past years, these policies gained the attention of human rights bodies as their objectives and/ or repercussions were directed at inhibiting, reducing, or restricting expressions of disagreement with or open opposition to the government. In 2003, as will be evidenced by the following cases registered by the Centre Prodh, the presence of the military in civilian tasks, such as in

public security and the administration of justice, resulted in the repression of indigenous communities; authoritarian mechanisms were used to put an end to protests, and police forces and legal recourses were used in an attempt to legalise repression and criminalize dissent. All of these cases present a concerning scenario for the protection and respect of human rights in the country.

### Repression against communities in resistance

The presence of the Mexican army in the areas of Zapatista influence in the state of Chiapas persisted in 2003 and the existence

of troops and roadblocks continued to provoke fear in the communities. The autonomous communities suffered acts of intimidation, and entire communities and individuals related to social or human rights organisations were harassed.



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An example of this situation was the harassment experienced by members of the autonomous community *Ocho de Febrero*, a Zapatista community located within the Montes Azules biosphere in Chiapas. On February 27, 2003, the community denounced that members of the Army, the Navy and the Federal Attorney General's Office for Environmental Protection had increased their harassment in order to force the members of the community to leave their land, which they had occupied for over a year. The community stated that approximately 25 detention orders existed against community members as a way to force them to negotiate leaving their lands.

Additionally, after the creation of the "*Caracoles*", an autonomous governing structure established by the Zapatistas in August 2003, the Good Government Council of the "*Caracol*" denounced that the Mexican Army had gone into several



communities, establishing check points or roadblocks and harassing the residents.

The communities of the Zapatista autonomous municipalities have also been harassed by members of the PRI, who at times have threatened to cut their electricity and water services because they support the EZLN (*Ejército Zapatista de Liberación Nacional*, Zapatista National Liberation Army). These communities also continue to denounce aggression by PRI groups who, in alliance with local power leaders, intimidate and harm them. On August 23, 2003, the Good Government Council denounced new aggression and threats by members of PRI groups of the Roberto Barrios municipality, whom they identified as “paramilitaries.” As part of this case, Francisco Gómez Pérez, indicated as the paramilitary leader, personally insulted and tried to force the residents of the *ejido* to state that they are in favour of actions against the Zapatistas.

Apart from the situation lived in Chiapas and within the context of armed groups, several cases of repression and human rights violations were registered in 2003. In one such case, the judge of the Eighth District in Oaxaca issued on May 31, 2002, sentences of 30, 25 and 11 years in prison against six Zapotec indigenous from the Loxicha region who were accused of belonging to the Popular Revolutionary Army (*Ejército Popular Revolucionario*, EPR) and of perpetrating crimes such as terrorisms, sabotage and homicide. In regards to this case it should be mentioned that the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) has received complaints of human rights violations against Zapotec indigenous in this region by members of police and military corps such as: illegal and arbitrary detentions, abuse, torture, forced disappearances, false accusations, irregular composition of preliminary investigations, undue actions of the authorities in the judicial process and police and military incursions into homes.

### **Repression due to activism, efforts to organise, and demanding one's rights**

The liberties and rights to protest, to carry out political activities and to defend human rights have remained a target of human rights violations by authorities. Governmental authorities are also responsible for violations due to acts of omission, as they allow aggressions as serious as assassinations to remain in impunity. As a result, leaders and social activists continue to be victims of a series of human rights violations and their dissidence is criminalized.

On February 20, 2003, Felipe Ayala Arreola, a survivor of the 1995 Aguas Blancas massacre in Guerrero and member of the Campesino Organisation of the Southern Sierra (*Organización Campesina de la Sierra Sur*, OCSS) was assassinated. Survivors of the massacre in El Charco, Guerrero (1998) also expressed in April that they were afraid for their lives and denounced that they had been harassed and repressed by the government of Guerrero.

Members of the Popular Indigenous Council of Oaxaca “Ricardo Flores Magón” (*Consejo Indígena Popular de Oaxaca*, Ricardo Flores Magón (CIPO-RFM)), also denounced on May 28, 2003 the intimidation, death threats and psychological torture suffered by their colleague, Raúl Gatica Bautista, who upon entering his home on May 24<sup>th</sup>, found that all of his books and magazines and his personal documents were in torn apart and thrown onto the floor; on top of the documents were photographs of dead people. On the walls of his kitchen was the text “Raúl Gatica, if you continue to fight with the indigenous communities against the interests of the government, we will kill you.”

On September 22, 2003, members of the Independent Totonaca Organisation (*Organización Independiente Totonaca*, OIT) denounced that four members of the organisation had been tortured by members of the Judicial Police of the state of Puebla, who, without proof, accused them of being suspects in a murder. The OIT believes that the aggression was instigated by the former municipal president of Huehuetla, Puebla, Víctor Rojas Solano, in an attempt to sabotage the investigations being carried out by the state Attorney General's Office into the murder on August 6, 2003, of the indigenous rights defender, Griselda Tirado Evangelio, who served as an advisor to the organisation.

Protests as a result of economic, political or social situations also continue to be viewed as if they were security problems. In order to confront the opposition and protests, all three levels of the government have assumed an attitude with authoritarian characteristics. These acts of repression are generally carried out during protests, marches, sit-ins and roadblocks. Faced with the protests, the government uses force to dissolve and violently remove the protesters, resulting in arbitrary detentions and physical aggression.

In one instance in Oaxaca in June 2003, members of the Union of Workers in Service of the State and Decentralised Institutions of State-Nature of Oaxaca and members of the Committee of Citizen Defence, who were protesting to demand the liberty of Oliverio Neri López and René García García, who had been detained for political issues in the union in October 2002, were forcefully removed and repressed by members of the security forces of the state of Oaxaca, leaving 30 people wounded. The governor of the state, José Murat, said that the removal was “peaceful” and that “his government is not a repressor.” Nevertheless, it has been affirmed that tear gas, stun guns, cattle prods, bats, batons, and dogs were used, and that women, children and the elderly were beaten.

In another case in Oaxaca, in January 2003, the Unihidalguense Citizen Council (*Consejo Ciudadano Unihidalguense*, CCU) presented to the Auditing Office of the Treasury of the Congress of Oaxaca a request for the auditing of the municipal administration of the Union Hidalgo municipality because they had evidence of corruption and embezzlement of funds by the municipal president and his council, who refused to present accounts to the citizens. The legislative office promised to send a commission to look into this matter on February 13, 2003 and on this



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day, as the commission did not arrive, a large group of individuals went to the municipal government office to look into this matter and they were shot at by the local police, resulting in one death and 10 injured individuals. The authorities continue to ignore the conflict and have permitted preliminary investigations to be open against members of the CCU. Twenty detention orders were originally issued and several members of the CCU remain detained.

Human rights defenders are also consistently at "high risk" given that, due to the nature of their work, they can be victims of those who look to hinder, punish or impede the defence that they are carrying out. The impunity present in investigating attacks against human rights defenders promotes the continuation and even increase in these aggressions. If in many instances it is difficult to identify the material perpetrators of violations against human rights defenders, it is almost impossible to identify the intellectual authors of these acts, permitting them to act with impunity.

On several occasions in 2003, with the most recent incident in November of this year, Samuel Castellanos and Beatriz Casa, members of Christian Action for the Abolition of Torture (*Acción de los Cristianos para la Abolición de la Tortura*,

ACAT) received death threats related to their defence of individuals imprisoned as being responsible for the massacre of Agua Fría, Oaxaca in 2002 and the supposedly arbitrary detention and torture that these detainees experienced. Seven members of ACAT have been threatened, harassed or detained since 2000, resulting in the request of the Inter-American Commission on Human Rights on April 8, 2003, that the Mexican government adopt precautionary measures to protect them.

On April 30, 2003, three unidentified men attacked Evangelina Arce, the mother of one of the girls who disappeared in Ciudad Juárez, Chihuahua and a member of the Independent Committee of Human Rights of Chihuahua. The week before an unidentified vehicle was seen outside of her home and she had recently received anonymous phone calls. Amnesty International has expressed fear that these acts of intimidation could be related to Arce's efforts to pressure the authorities to investigate the case of her daughter, Silva Arce who disappeared on March 11, 1998.

### Conclusion

The International Covenant on Civil and Political Rights recognises, amongst other rights, the right to hold opinions without

interference, the right to freedom of expression and the right of peaceful assembly (articles 19 & 21), while the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms recognises the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms. However, as the cases described above illustrate, individuals who attempt to exercise these rights in Mexico continue to be subject to violence and repression for their actions. While many of the situations described are at the local level, the federal government has not implemented measures to intervene in these cases of grave human rights violations. To address this situation, the Fox Administration must break with the tendencies of the past and its own practices evidenced in 2003 and take concrete steps to guarantee the human rights of those individuals, organisations and communities who express their disagreement with or opposition to the government.

\* More information on this issue can be found in Prodh's 2003 Annual Report on Human Rights Violations, available on our web page at: <http://www.sjsocial.org/PRODH>

## Public Security and Human Rights

The issue of public security is a permanent concern of Mexican citizens and with this concern is the inclination of certain sectors of society to express their support for toughening measures to combat public security problems. Through this, authorities have justified using authoritarian and repressive measures to combat insecurity, without resolving the core issues that generate these problems.

The security of the population is a human right and public security is defined in Mexican law as "a function under the charge of the State which aims to safeguard the integrity and rights of persons, as well as to preserve public freedoms, order and peace." (Art. 3, General Law to

Establish the Bases of Coordinating the National Public Security System). Nevertheless, recently implemented measures throughout the country illustrate that in many cases, measures to preserve and promote public security also put at risk human rights.

### The use of force and arbitrary measures

In a seminar held in September 2003 on Public Security and Human Rights, organised by the Washington Office on Latin America, the Human Rights Commission of the Federal District (*Comisión de Derechos Humanos del Distrito Federal*, CDHDF) and the Centre Prodh, Marcelo Ebrard, the Secretary of Public Security of the Federal District, stated that there is a lot of confusion amongst the police regarding the use of force "because 90 percent of the police

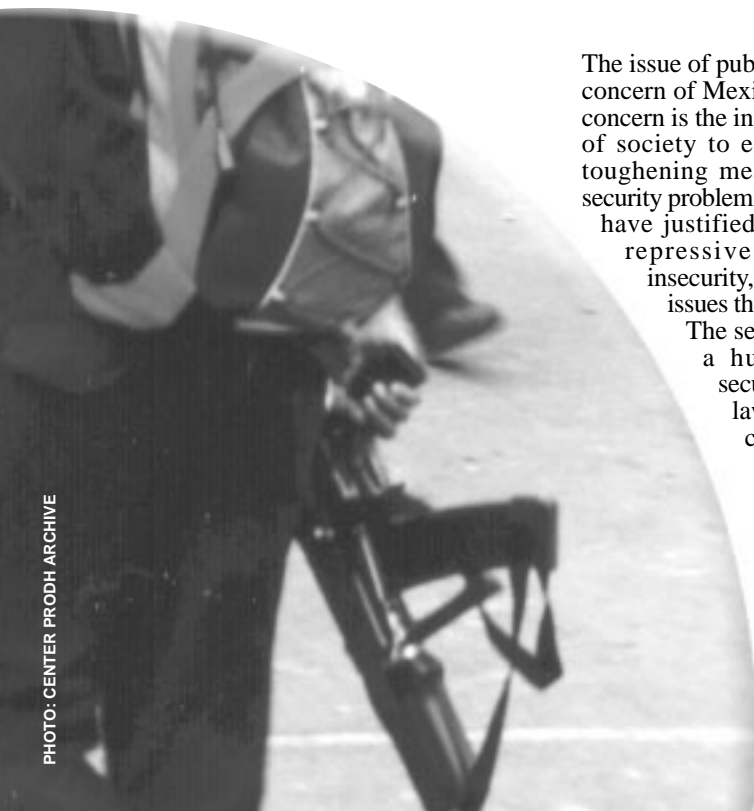


PHOTO: CENTER PRODH ARCHIVE



officers have never been trained on anything that has to do with the gradual use of force.” Ebrard went on to affirm: “the detention method in Mexico is the most violent, I think, of all of the world.”

In this context, the recent approval by the Secretariat of Public Security of the Federal District for members of police forces in the District to use handcuffs to detain individuals involved in robbery, kidnappings, or sexual aggression, or those who violently resist arrest, is concerning due to the possible misuse of such measure. In order to address this issue from a human rights perspective, the CDHDF has expressed that four issues should be attended to for handcuffs to be used in the District: establishing the norms that permit and regulate the use of handcuffs; implementing training measures, which should not only be technical but also develop criteria as to when, in which situations and why handcuffs should be used; the definition by the Secretariat of Public Security of controls that they will have to guarantee that there is no misuse, abuse or human rights violation in the use of this measure; and education both regarding human rights as well as the understanding of the tasks of the authorities within the established laws. (*La Jornada*, January 22, 2004)

Another concerning measure recently implemented by Marcelo Ebrard against the robberies of automobilists has been the authorisation for members of the  
preventative  
police to go

into homes without search warrants or apprehension orders when they are chasing after a delinquent who has been caught in *flagrante delicto* (in the very act of committing a misdeed). According to Ebrard, those who rob automobilists feel that they can act with impunity and seek refuge in their neighbourhoods without the police being able to go in after them. However, this measure goes against the Constitution of Mexico, which states that a judge is the only authority with faculties to authorise the entering of a member of the security forces into homes. In this regard, Emilio Alvarez Icaza, president of the CDHDF has stated that there are other ways to combat this crime, for example, if police officers see a supposed delinquent escaping into a home, they can surround the home and then get the authorisation from a judge to enter into the home and in this way combat crime while acting in accordance with existing laws.

While the cases mentioned above focus on the Federal District, other state and local governments are also implementing concerning measures in order to combat public security problems. For example, the human rights organisation *Indignación* located in Merida, Yucatan has denounced several revisions of young people in the streets in downtown Merida because they looked “suspicious”. In one instance at around 11 pm on September 19, 2003, around 30 municipal, state and federal police officers, as well as health officials went into a café and revised several of the young people present, going through their belongings without having a search warrant, as well as revising people found on the street outside of the café. These actions represent discriminatory acts as well as violating human rights and individual guarantees, as no one can be bothered in their person or in their possessions unless the agents possess a written authorisation for such an act by the corresponding authority. In another case, the town council of the municipality of Metepec in the state of Mexico authorised in February 2004 the prohibition to ask for money, sell gum, newspapers, cards or other products in the street, as well as prohibiting the activities of window washers, under the argument that these activities could put at risk the physical or psychological integrity of individuals or automobilists.

### Public security and criminal justice

Another concerning aspect of the current public security situation in the country is the lack of definition between public security

functions and those of the criminal justice system. While there is a crisis in the justice system in Mexico, as is illustrated by the high rates of impunity that still persist, this should not be confused with the responsibility of the executive branch of the government regarding the public service functions of the police forces. In this sense, there should be a clear division between the functions of investigating crimes and that of crime prevention, a division that currently does not exist as the preventative police also carry out investigations into crimes.

Similarly, penal reforms such as those proposed by the government of the Federal District to revise the penalties for minors; those of the government of the state of Mexico for individuals of 16 years old and above to be tried as adults for the crimes of rape, kidnapping and murder; the confirmation of 16 years old as the age for individuals to be tried as adults in Veracruz; and the statement by the governor of Aguascalientes that kidnappers, rapists and narco-traffickers should be subject to the death penalty, represent concerning measures that put at risk human rights such as the right to life and those guaranteed in the UN Convention on the Rights of the Child. These issues should be addressed within the justice system in the country and not within the sphere of public security

### Conclusion

There are many other elements of the relationship between public security and human rights, such as the increased militarisation of the public security forces, which cannot be discussed here given the limits of the article. What is important to emphasise is that public security and human rights should not be seen as contradictory, but rather complementary issues, and that true public security in a democratic State cannot exist without the respect for human rights. The measures currently being implemented to address public security problems focus on disciplinary measures which, apart from not respecting human rights, exclude the possibilities of implementing preventative measures to combat public security problems. In order to adequately address the problem of insecurity currently facing the country, one needs to analyse the economic, socio-cultural, and criminological reality of the country, and not only a focus on the latter. Through this integral approach, work regarding security and in respect for human rights would be focused on the reconstruction of the social network and the police would serve, not as repressors, but as an institution that contributes to the reconstitution of communal life.

## Classifying Forced Disappearance as a Crime

On December 10, 2003, the Guerrero Network of Civil Human Rights Organisations, the Miguel Agustín Pro Juárez Human Rights Centre and the Commission for the Defence of Human Rights of the State of Guerrero (CODDEHUM), with the support of the international organisations Human Rights Watch, Amnesty International, the Centre for Justice and International Law, and the Washington Office on Latin America launched the campaign “*They took them by force, they disappeared them... but they will not be forgotten,*” whose final objective



PHOTO: Poster made to promote the campaign on classifying forced disappearance as a crime in Guerrero.

is the adequate classification of forced disappearance as a crime in the state of Guerrero. According to the Inter-American Convention on Forced Disappearance of Persons, forced disappearance is considered “to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”

Apart from the hundreds of previous cases of forced disappearance that occurred in the context of the “dirty war” in the 1970s and 1980s in the country, cases in recent years illustrate that the crime of forced disappearance continues to occur in Mexico.

In 1997, the UN Working Group on Forced or Involuntary Disappearances reported that Mexico was in third place regarding the number of forced disappearances, and from 1996 to 1998 the Working Group received information on 115 cases in Mexico. Since the beginning of the Fox Administration the Centre Prodh has documented more than 20 complaints of forced disappearance. In 2002, the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) alone received 22 complaints of forced disappearance.

In this regard, in its 1998 *Report on the Situation of Human Rights in Mexico*, the Inter-American Commission on Human Rights (IACHR) recommended that the Mexican government “take the necessary steps to reform the criminal law of Mexico with a view to characterizing forced disappearance as a crime” and that it “conduct meaningful, prompt and impartial investigations in all cases of disappearances that have not yet been resolved and those responsible punished.” (paragraphs 700, 701) However, while forced disappearance is classified as a crime at the federal level (April 2001), it does not yet exist at the state level, with the exception of the Federal District and the state of Oaxaca.

### Forced disappearances in Guerrero

Although forced disappearances occur throughout the country, the situation of forced disappearances in the state of Guerrero is of particular concern, highlighting the need for a campaign of this nature. Recently, the Federal Special Prosecutor for Social and Political Movements of the Past declared the state of Guerrero, where several state authorities and members of the army were involved in repressive acts and in hundreds of cases of forced disappearances during the dirty war, as a “martyr state”. Illustrative of this situation is the fact that in 2002, the Commission for the Defence of Human Rights of the State of Guerrero emitted Recommendation 019/2002 involving eight cases with nine individuals disappeared. Seven of said disappearances occurred in 2001 and therefore were during the current Fox Administration. Similarly, the National Human Rights Commission documented in its report on forced disappearances in the 1970s and the beginning of the 1980s approximately 322 cases of forced disappearance concerning the state of Guerrero.

One of the cases included in the CODDEHUM’s 2002 recommendation was that of Mr. Faustino Jiménez Álvarez who disappeared in Guerrero on July 17, 2001 after State Judicial Police violently removed him from his home in Tierra Colorada. Mr. Jiménez was supposedly involved in the kidnapping of a family member, the businessman José Valle. Several individuals have been named as being directly responsible for Jiménez’ disappearance but the authorities of the state of Guerrero, particularly the Attorney General’s Office of Guerrero have continued to obstruct justice in this case, protecting those responsible for this forced disappearance.

In 2003, authorities issued apprehension orders against several individuals implicated in the crime but to date none of them have been detained. In this regard, the Commission for the Defence of Human Rights of the State of Guerrero issued recommendation 033/2003 on September 9, 2003, concluding that “the human rights violations against the complainant and her husband, Faustino Jiménez Álvarez, who was deprived of his liberty and whose whereabouts remain unknown, are fully proven, all of this in virtue of the fact that the apprehension orders emitted by the First Judge ... have not been duly complied with.” Additionally, in spite of the fact that several witnesses have established the responsibility of other state agents in Jiménez’ disappearance, this information has not been investigated. In the case of Faustino Jiménez, because forced disappearance is not classified as a crime in Guerrero, the consignment and legal charges in the court are for the crime of kidnapping, which does not include all of the elements of the forced disappearance of persons, such as being a multiple human rights violation.

Both the cases of forced disappearance in the past as well as more recent cases, such as that of Faustino Jiménez, follow two common patterns: the first is that the forced disappearances were carried out by State agents and the second is that in all of them justice is still pending, so much so that to date there is no certainty regarding the whereabouts of the disappeared.

### Objectives of the campaign

The crime of forced disappearance is considered by international doctrine as a crime against humanity. It is a State crime, planned, ordered, executed and supervised by officials whose task should be that of

protecting the population. State-level, national and international organizations have been able to illustrate that one of the reasons why cases of forced disappearance remain in impunity is the absence of legislation that protects the citizenry and provides resources for the investigation, prosecution, and sanction of those responsible, as well as the reparation of damages and guarantees for the no-repetition of these acts. In light of this, the crime of forced disappearance should be persecuted and punished regardless of the political

status or economic positions of those who committed the crime, punishing the material as well as intellectual authors of the act.

The classification of forced disappearance as a crime within the legislation of Guerrero, as well as in other states in Mexico that do not include this crime in their Penal Code, is one step towards bringing justice to the victims and their family members of this human rights violation and a measure to contribute to its eradication as a practice. For this reason, on January 14, 2004, the

organisations mentioned previously presented a legislative proposal to classify forced disappearance as a crime to the Government Commission of the Congress of Guerrero. It is hoped that the Congress will now consider the adoption of this important proposal as a way to advance in the respect and promotion of human rights in the state.

## News Briefs

### SEDENA has not observed the CNDH's recommendations

The National Human Rights Commission recently reported that 14 of the 52 recommendations it issued in 2003 have not been observed by the governmental dependencies that received them; two of these 14 recommendations were directed at the Secretariat of National Defence (SEDENA). One of the recommendations for SEDENA regarded the rape committed by members of the Mexican Army against a *tlapaneca* indigenous woman in the community Barranca de Tecuani in the state of Guerrero. According to the CNDH, the Military Public Minister agreed to submit the preliminary investigation to the Military Attorney General but stated that "there is no legal interest of the affected party, and there is also no accusation or indication against someone in particular, nor any evidence that would allow one to consider that members of the Mexican Army belonging to the 41<sup>st</sup> Infantry Battalion have committed the criminal activity being investigated." This is in spite of the fact that the victim presented a complaint regarding rape, breaking and entering, and abuse of authority before the public minister two days after the events occurred. The CNDH also stated that there was a delay in and an irregular integration of the preliminary investigation and that the investigations carried out were insufficient.

The other CNDH recommendation, 16/03, was sent to the Military Attorney General regarding the human rights abuses committed against members of the 56<sup>th</sup> Infantry Battalion of Guamúchil, Sinaloa by members of the Military Attorney General's Office including the rights to legal security, due process, personal freedom, as well as the torture committed against them. The Military Attorney General's Office communicated to the CNDH that this recommendation was not accepted because it is not possible "to accept the present case as an act that did not observe human rights (because) that actions were done in accordance with the law in the face of a serious situation that disturbed the discipline and laws of the military."

### Official version of the murder of Griselda Teresa Tirado is rejected

On February 9, 2004, the Special Prosecutor's Office for the Attorney General's Office of the State of Puebla presented its conclusion regarding the murder of the indigenous rights defender and founding member of the Independent Totonaca Organisation (OIT) Griselda Tirado Evangelio on August 6, 2003. The official conclusion is that Tirado Evangelio's death was due to a "crime of passion."

Tirado Evangelio's family members as well as the OIT have rejected the official version because they state that all of the lines of the investigation were not exhausted, the conclusion does not explain why members of the OIT received threats regarding the case and because it does not take into consideration the work that Tirado Evangelio carried out in the region where in many cases she was in confrontation with local power leaders related to the PRI.



## Glossary

**Autonomous municipalities**, Self-governing entities originally established by the Zapatistas in the face of neglect by state and federal governments. In the past years, several other indigenous municipalities throughout the country have declared themselves autonomous.

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

**EPR**, *Ejército Popular Revolucionario*, Popular Revolutionary Army. Armed opposition group operating in the states of Guerrero and Oaxaca, first appeared in 1996.

**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, held power for 71 years until defeated in the July 2000 elections.

**PT**, *Partido de Trabajo*, Labour Party.

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

**SRE**, *Secretaría de Relaciones Exteriores*, Secretariat of Foreign Relations.

**UNOHCHR**, United Nations Office of the High Commissioner for Human Rights.

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 three work areas: international relations, communication and organisational development. 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.

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