



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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### Federal Government Fails to Address Torture in Guadalajara

While we were publishing the last edition of Focus, in the context of the III European Union- Latin American and the Caribbean Summit, which took place on May 28-29, 2004 in Guadalajara, Jalisco, dozens of young people and some adults were detained and several of them were tortured for their supposed participation in violent acts which occurred during a manifestation on the 28th. This was denounced from the beginning by human rights and social organisations that were participating in activities parallel to the Summit, as well as many others. As a response to said complaints, we received only silence from the state government as well as the government of President Fox. Almost three months later, the National Human Rights Commission (CNDH) issued a report indicating that the police authorities of Jalisco- both at the state and municipal level- detained people who "looked suspicious", or because the police believed that they had participated in the manifestation. The CNDH documented that on May 28, 2004, 73 people were illegally detained, 55 subject to cruel and degrading treatment, 73 held incommunicado and that there were 19 cases of torture. To date, 18 people are still detained. The governor of Jalisco rejected the CNDH's report and stated that he would not send the cases to the Attorney General of the state so that he would initiate an investigation, nor would he begin administrative procedures against the

public servants who have been indicated in these grave human rights violations. For his part, the Secretary of the Interior, Santiago Creel, simply stated that it would not be good for the Fox Administration to intervene in the case of the torture in Jalisco, given that it involves the relationship of an autonomous body (the CNDH) with a state. This is difficult to understand given that human rights commitments are State commitments and that it corresponds to the Federal government to ensure that they are respected.

The silence of President Fox in this case, which involves a state government of his own party, the PAN, contrasts with the continuous declarations that he has made regarding the respect for the law in the case of the judgement as to whether the Head of the Government of the Federal District, Andrés Manuel López Obrador can be investigated while in office for committing a supposed illegal act. It should be noted that López Obrador belongs to another party, the PRD, and is currently in the lead in the surveys regarding the presidential elections for 2006. These inconsistencies and selective cases in which Fox invokes the rule of law, as well as the articles in this edition of Focus, make evident the lack of a true commitment of President Fox to human rights, in spite of his discourse on the issue.

### Human Rights and the Public Health Care System in Mexico: Violations and Inadequacies

On August 10, 2003 Claudia Yasmín Burgara Alarcón was admitted into the General Hospital "Doctor Aquiles Calles Ramírez" of the Institute for Social Security and Services of State Workers (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, ISSSTE) in order to give birth to her child. She was given medicine through an intravenous tube to induce labour but as the gynaecologist was in surgery, this treatment was stopped and instead she was given medicine to control her blood pressure. Later, Burgara was again given medicine to induce labour and she began to experience acute pains. However, she was not attended to at this time as the specialist was seeing someone else in the emergency room and later went to eat breakfast. A doctor in residency finally attended to Claudia Yasmín but when the baby was born it was not crying and after several attempts to save it, it was proclaimed dead. After analysing the case, the National

Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) resolved that Claudia Yasmín Burgara had not received adequate medical attention, an adequate medical evaluation and supervision, nor timely, professional and quality care which is the professional obligation of the public servants who are part of the Obstetrics and Gynaecology Service of the General Hospital. The CNDH stated that the right to life and the right to the protection of health as stipulated in national legislation and international and regional human rights instruments were violated and recommended an administrative investigation into the medical personnel present at the time. It was also recommended that an economic indemnification to the family members of the deceased child be ordered and carried out by the ISSSTE.

Unfortunately, the case of Claudia Yasmín Burgara cannot be considered an isolated act within the public health care system in Mexico. While the right to health is recognised both in Mexican legislation as well as in regional and international human rights instruments, such as the International Covenant on Economic, Social and Cultural

Rights (ICESCR), violations of this right are occurring in an alarming manner within the public health care institutions of the country. Furthermore, many of the individuals not enrolled in the public health care system are at risk of economic ruin due to medical expenses.

### Public health care and human rights violations

In his presentation before the Senate in June of 2004, José Luis Soberanes, the president of the CNDH, stated that the number of complaints received against the health sector in 2003 was higher than those received against the public security bodies that traditionally occupy the first place in terms of the complaints received (*La Jornada*, June 18, 2004). Of the 52 recommendations issued in 2003, the highest number, 10, were directed at the Mexican Social Security Institute (*Instituto Mexicano de Seguro Social*, IMSS) and four at the ISSSTE, the two main public health care institutions in the country. In the first six months of 2004, of the 38 recommendations issued by the CNDH, ten, around 26%, were directed at public health care institutions, particularly the IMSS and ISSSTE. These numbers are concerning because they do not necessarily indicate that complaints against public security bodies, such as the Federal Attorney General's Office (*Procuraduría General de la República*, PGR) have decreased, but rather that complaints against health institutions have increased in an alarming manner.

Apart from the case of Claudia Yasmín Burgara Alarcón, which received the CNDH Recommendation 04/2004, a brief examination of other cases subject to recommendations in 2004 sheds light on the concerning situation facing the public health sector in Mexico and its respect for the right to health and to life itself.

- In May of 2003, Agustín Vargas Gutiérrez had both of his arms operated on at the Emergency and Trauma Hospital "Dr. José Manuel Ortega Domínguez" of the IMSS. Mr. Vargas was not adequately observed after his surgery and more than 30 hours passed before he was clinically evaluated.

Due to this lack of attention, it was not detected until it was too late that Mr. Vargas had developed circulation problems in his left arm and the arm had to be amputated. (Recommendation 9/2004)

- On September 22, 2003, Guadalupe González Villegas

was operated on in the Regional General Hospital Number 196 of the IMSS in Ecatepec, state of Mexico, supposedly to remove a cyst in the area near her right jaw.

The doctor that was in charge of Mrs. González's care did not adequately inform her or her husband of the seriousness of her condition and the risks involved in the operation, and made a precipitated decision to operate on her. The surgery injured her internal artery and jugular vein, causing a severe haemorrhage that later resulted in her death. (Recommendation 26/2004)

- On June 17, 2003, the minor Luis Jacob Moreno Marín was operated on in the General Hospital of Zone Number 35 of the IMSS in Ciudad Juárez, Chihuahua in order to have his tonsils removed. After the surgery, the anaesthesiologist did not directly observe the boy while he was recovering and he suffered hypoxia, causing seizures and later brain death. (Recommendation 27/2004).

These cases are only a few of the many that occur within the public health care institutions in Mexico, the majority of which are related to inadequate care and medical negligence. In this regard, apart from the complaints received by the CNDH, the National Commission for Medical Arbitration (*Comisión Nacional de Arbitraje Médico*, Conamed) stated that around 30% of the complaints that they receive from the population are in regards to the lack of infrastructure and personal in public health centres, particularly in the areas of trauma care, orthopaedics and gynaecology and obstetrics.

### Lack of coverage

Apart from the oftentimes inadequate care received within the IMSS, ISSSTE and other public health care institutions, many Mexicans are not under any medical coverage programmes and must spend significant amounts of their income to attend to their medical needs. In his weekly radio address on August 15, 2004 President Fox reported that more than 48 million Mexicans, almost half the population, is without social security. This lack of universal coverage, which causes economic hardship for many families, also represents the failure of the Mexican government to fulfil its obligation "recognise health as a public good" and adopt measures to ensure this right, including "primary health care, that is, essential health care made available to all individuals and families in the community.... [and the] satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable." (Article 10 Protocol of San Salvador, OAS)



PHOTO: CENTRE PRODH ARCHIVE/TG

One proposed solution by the government to confront this problem, also promoted by Fox in his radio address, is through “Popular Insurance” which is designed to attend to individuals who are not covered by social security and is oriented towards the reduction of direct medical expenses. In this programme, the federal government provides a subsidy to complement the contributions made by the individual families. However, given that the coverage only includes those medicines and interventions listed in the “basic health catalogue” of the health centres and general hospitals under the public health system, it does not cover the treatment of chronic and degenerative illnesses, and it is only destined towards low income families in urban and semi-urban areas, thus excluding the rural population which faces some of the most serious shortcomings regarding medical attention, it is evident that this programme is insufficient in guaranteeing the necessary access to medical services so that all of the population is in the possibility to fully enjoy the right to health.

## **Conclusion**

According to the Organisation for Economic Co-operation and Development (OECD) Health Data 2004, the Mexican government only invests 553 dollars per habitant per year on health care, placing it in the second to last place regarding the public spending on health care of the 30 member countries of the OECD, only above Turkey. It is also in the second to last place in terms of spending on medicines per habitant and in prevention expenses and public health care per habitant, spending only 13 dollars per habitant each year for the latter. In 2002, Mexico spent only 2.8% of its GDP on health care, the lowest percentage of the OECD countries reporting for 2002 as well as for 2001. This information, along with that detailed above, presents a concerning perspective for the improvement in the respect and protection of the right to health in the country as it illustrates that not only are there serious problems in the public health care system and a vast lack of medical coverage for the population, but also that the government has not had the political will to designate an appropriate amount of its public expenditure in order to progressively comply with its obligations in regards to the right to health. In light of this, unless the government takes steps to reverse this situation and implements effective programmes of quality services for the population, many people will continue to lack health care services and the alarming picture presented by the CNDH regarding the public health care system and human rights violations, including the right to health itself, may only continue to persist.

## **The Economic Crisis in the IMSS Leads to Violations of Labour Rights**

On August 10, 2004 the decree issued by President Fox to modify the Social Security Law of Mexico was published in the Official Daily of the Federation, whereby the reform entered into force. The reform of this law, approved previously by the Senate and Chamber of Deputies, is within the context of the financial crisis facing the IMSS, who had proposed modifications to the Pension and Retirement Regimen as a way to confront this crisis, while not attending to several other problems that have contributed to the current economic situation of the Institute. After months of failed negotiations between the Social Security Institute and its union regarding the proposed modifications, the government decided to bypass the labour right of collective negotiation of the union workers by creating and approving a reform of the law, violating this essential labour right as recognised in both national legislation and in regional and international human rights instruments. The reform itself maintains the benefits for the workers currently employed and retired and will only apply to future workers of the IMSS, granting them less benefits, representing not only a violation of the principle of an equal salary for equal work, but also an unjustified discrimination between workers, violating the human right to equality before the law. While the details of the content of the reform and of the failed negotiations between the IMSS and its union are beyond the scope of this piece, it is

evident that with this reform the Mexican government privileged attending to an economic problem, and in a limited manner at that, without regard for its obligation to respect, protect and guarantee human rights.



PHOTO: CENTRE PRODH ARCHIVE / T.G.  
A march of the IMSS union workers held to protest the reform before it was approved by Congress.



## Oaxacan Elections Reflect the Persistence of Irregularities

On August 1, 2004, elections were held at the municipal level in the state of Baja California Norte and at the municipal and state level (governorship) in Aguascalientes and Oaxaca. After the elections, observers and/ or political parties in all three states expressed complaints of irregularities occurring during the electoral process, as well as concern for some of the electoral results. For example, in Tijuana, Baja California, after extravagant campaign spending, the municipal presidency was won by Jorge Hank Rohn, a member of the Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI) who has been indicated as the intellectual author of the murder of the journalist Héctor Félix Miranda in 1998, a murder in which Hank Rohn's body guards have been sentenced. Apart from this example, the irregularities present in the elections in Oaxaca were marked both by their number and documentation as being particularly important.

In this regard, the "Collective for Democracy", made up of twenty-one civil society organizations<sup>1</sup> at the national and local level, including the Centre Prodh, which was created to observe the electoral situation in the state, carried out activities to strengthen the culture of citizen participation through the promotion of a civic educational campaign, the monitoring and denouncement of abuses and they implemented electoral observations on the day of the elections. During the elections themselves, 242 observers, distributed in 48 municipalities, covering 18 electoral districts of the state, were present. What follows is a summary of the report done on this electoral observation, issued on August 18, 2004.<sup>2</sup>

### The context prior to the elections

Within the context of the Oaxacan elections, it is important to indicate that José Murat, of the PRI, currently governs the state and that this party has controlled the government of the state for over 70 years. In this regard, it also has significant influence over the

electoral institutions in Oaxaca. In the governorship elections, two coalitions were formed covering the principal political parties in the country. These coalitions were: the Coalition of New Oaxacan Force (*Coalición Nueva Fuerza Oaxaqueña*) made up of the PRI, the Green Party of Mexico (*Partido Verde Ecologista de México*, PVEM) and the Labour Party (*Partido del Trabajo*, PT); and We are All Oaxaca (*Todos Somos Oaxaca*) made up of the National Action Party (*Partido Acción Nacional*,

PAN) the Party of the Democratic Revolution (*Partido de la Revolución Democrática*, PRD), and Convergence (*Convergencia*). While the results of the election were widely contested, on August 24, 2004, the State Electoral Court resolved the complaints that had been lodged; annulling the results of only nine of 632 disputed voting stations and confirming as valid the election of Ulises Ruiz Ortiz, the candidate for the Coalition of New Oaxacan Force.



PHOTO: CENTRE PRODH ARCHIVE/TG

(1) Alianza Cívica, Alianza Cívica de Pinotepa Nacional, Alianza Mexicana por la Autodeterminación de los Pueblos Indígenas AMAP, Centro de Estudios Sociales y Culturales de Antonio Montesinos, Centeotl, A.C., Centro de Derechos Humanos Miguel Agustín Pro Juárez, Consultoría Intercultural para el Desarrollo Integral A.C., Comisión Diocesana de Pastoral Social, Servicios para una Educación Alternativa Educa, Ethos Interciglo, Enlace Comunicación y Capacitación, MICHIZA, Red Oaxaqueña de Derechos Humanos, Unión de Comunidades Indígenas de la Zona Norte del Istmo (Ucizoni), Tendiendo Puentes A.C, Centro de Derechos Indígenas Flor y Canto A.C., Centro de Derechos Humanos Bartolomé Carrasco A. C., Centro de Derechos Humanos Mahatma Gandhi A. C., Tequi Jurídico A.C., Centro de Comunicación Social A.C.

(2) The full text of this report in Spanish is available on Prodh's webpage: <http://www.sjsocial.org/PRODH>

In the two months leading up to the elections in Oaxaca, several observation activities were carried out, including monitoring cases of complaints for electoral crimes and of cases presented before the media, and the monitoring of electoral campaigns and how resources were handed over to the municipalities bordering on the urban areas through the federal governmental program “*Oportunidades*” (Opportunities), which is coordinated with the states through State Technical Committees. The results of this work presented the following characteristics:

- The few complaints that were registered during this period indicate the importance of the political culture in the state. The “common citizen” will rarely present a complaint before the media or before the bodies of the justice system, unless their physical integrity is guaranteed or they are able to be anonymous. There is a well-based fear that upon presenting a criminal complaint, the citizen will be in a vulnerable situation regarding the political institutions, which could carry out repressive measures.
- The media outlets were the alternative chosen by the citizenry to present their complaints and not the electoral bodies or those of the justice system. In this electoral process, the media, particularly the print media and radio, became the true popular courts through which complaints and accusations were ventilated.
- In this electoral process, two recurrent phenomena were present regarding vote buying and coercion: corporate actions promoted by the party structures and the different governmental spheres; and the political practice of diverse associations or unions to demand resources or services in exchange for the corporate vote of their affiliates. The old practices of vote buying and coercion through conditioning social programmes, providing support such as boxes of food or construction material in exchange for a vote, and actions of pressure, intimidation and blackmail by political actors, amongst others, also continued to persist.
- Electoral crimes and the pressuring of individuals occurred more in the rural areas of the state. Illiteracy, ignorance, and a lack of awareness of the justice system, were all factors that continued to be present in the peasant and indigenous municipalities, making them an easy prey for the political parties.
- At the federal, state and municipal level, the influence of the government in the

electoral process was notable, something that was also denounced by the candidates.

- The money spent on publicity by the candidates for the election was also notable. Although it has not been publicly registered, it would not be risky to state that the two party coalitions went beyond the established limits for campaign expenses.

### **Results of the election day observation**

The Collective for Democracy had warned before voting day that there would not be clean elections in Oaxaca and unfortunately, this turned out to be the case. Of the irregularities that were reported by the observers during this day, the following stand out:

- There were 31 reports of violations of the right to a free and secret vote. This was done in several ways, including: a person located within the voting booth who saw who the other person was voting for; that the voters showed how they voted to another person before putting their ballot into the box; there were people with lists of voters (different from the official voter registry) who were checking off who voted; and that there were people talking to the voters in the line or before the individual got into line to vote, exercising some sort of pressure on them.
- There were 16 cases of individuals who did not appear on the voter registry and were not able to vote, although many of these individuals assured that they had voted in the federal elections the previous year in the same voting station.
- There were 13 cases of individuals offering to others “free” rides in trucks or taxis so that they could vote in their corresponding voting stations. After voting, the individuals would show their vote to a representative of a political party outside of the booth so that they could be registered on a list.

Other irregularities that were recorded in lesser numbers were in regards to voting booth officials or the ballots, vote buying and coercion, threats to observers, and the stuffing of ballot boxes. Overall, 82 different irregularities were registered in the 48 municipalities that were observed.

### **Evaluation of the electoral process**

From this electoral observation, the members of the Collective for Democracy

came to several conclusions regarding the situation of the election system in Oaxaca.

- The large presence of election observers, where non-official versions estimate 2,500 unaccredited observers as well as 2,150 observers accredited by the State Electoral Institute, is noteworthy due to its size as well as the interest present in election observation. However, this observation was unable to inhibit irregular activities and fraudulent practices.
- The electoral institutions were highly criticized due to their partiality. Much of the focus of the political competition was on the lack of trust for the electoral bodies, particularly the General Council of the State Electoral Institute. Actions of the Institute, such as the fact that the individuals to be present as officials at the voting booths were not elected through a random process; that there were accusations of telephone espionage; that irresponsible declarations were made in the context of the political campaigns and that the accreditation of the election observers took a lot of time, all created more distrust regarding the impartiality and effectiveness of the Institute.
- As the information regarding the period before the election day and the irregularities occurring during the day itself illustrate, the fraudulent practices of buying and coercing votes have become a constant in the electoral processes in the state.
- The time period of the election campaigns and the lack of regulation of the pre-campaign period resulted in an excessively long campaign period.
- While citizen participation in the elections reached a record level of 46.2%, the fact that less than half of the registered voters still do not vote represents several challenges facing the political culture in the state.

The results of this election, as well as complaints of irregularities in other state elections that have taken place in 2004, reflect the fact that while the electoral process at the federal level has made great achievements in regards to transparency and respect for the right to a secret and free vote, much still needs to be done in the election process at the state level to ensure clean and free elections and a true democracy in the country.

## The Possibilities of Sanctioning the Crimes of the Past and to Know the Truth Fade Away

On July 23, 2004, for the first time in recent Mexican history, a judge has accepted to file a suit against an ex-President. The accusation was made by 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 (FEMOSPP)*, an office created on November 27, 2001 by President Fox as a part of the Federal Attorney General's Office (*Procuraduría General de la República*, PGR). This Special Prosecutor's Office was created - instead of the creation of a Truth Commission as President Fox had promised initially during his electoral campaign - based on the promise that it would investigate and punish those responsible for crimes committed during the "dirty war" in Mexico, which took place from the end of the 1960s to the middle of the 1980s.

The suit against the ex-President Luis Echeverría Álvarez -who governed Mexico from 1970 to 1976-; four more high ranking ex-public servants and 7 others, considers their possible responsibility in the abuses that occurred on June 10, 1971. On this day, the paramilitary group "*The Hawks*" (Los Halcones) attacked a demonstration of thousands of students in the Federal District who supported fellow students from the Autonomous University of Nuevo León -the largest demonstration seen after the one held on October 2, 1968-. The attack resulted in the death of more than 20 students and dozens of injuries. This paramilitary group was created, sponsored and trained by the then administration of President Luis Echeverría Álvarez. In light of this, the suit was filed for genocide, a crime that has been contemplated in the Mexican legislation since 1967.

### Reactions to the filing of the suit

The possibilities presented with such an accusation generated a polarized atmosphere over the weeks that preceded it, where members of the Army as well as members of the Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI), party to which President Echeverría belongs, and even within the PGR, where the Special Prosecutor's Office is located, made commentaries that were interpreted as threats and pressure against the work



PHOTO: CENTRE PRODH ARCHIVE/TG  
Rosario Ibarra, Magdalena Gómez, Félix Hernández Gamundi and Raúl Álvarez Garín in a press conference regarding the filing of a suit against ex-President Luis Echeverría.

done by the Special Prosecutor Ignacio Carrillo Prieto, who is in charge of the investigation and the FEMOSPP itself.

On June 30<sup>th</sup>, the National Defence Minister, General Clement Vega García reiterated in a public speech: "facing the future and with a solid Mexican history, I believe that we should pay attention so that our nation does not fall out of our hands, these are times to reconcile". He also pointed out that he was not only talking about reconciling with a member of the Army but also that "it is necessary to know how to forgive during these times" (*La Jornada*, July 1, 2004). Before this statement, General Vega García had said that he would support an Amnesty Law. Apart from this, the Sub-Attorney General Against Organised Crime from the PGR, José Luis Santiago Vasconcelos, pointed out in relation to the above that: "It is very difficult now to try to put on trial someone who lived in different circumstances, who then was forced, almost physically, to carry out contention actions in relation to some demonstrations. What was talked about was a final point, we talked about forgiveness and we talked about leaving resentments behind that we have been carrying on our shoulders for a long time, which have no solution. The measures taken recently have only increased resentments and are taking Mexico towards an apparent separation that we now need to overcome" (*La Jornada*, 2 July, 2004).

On their part, prominent PRI members said that the suit was a persecution against their

party and, on this basis, demanded the resignation of the Special Prosecutor Carrillo Prieto. On July 15<sup>th</sup> the PRI governor in Puebla, Melquiádes Morales, asked the Special Prosecutor's Office to leave the clarification of the events to historians and said, "it is not convenient to go to extremes, because the country runs the risk of entering into a confrontation of unpredictable consequences". Also, before the filing of the suit against the ex-President, the PRI's Permanent Politics Commission said that they would maintain the political dialogue with Fox's government in exchange for closing the chapter of the dirty war. In addition, the PRI integrated a group of recognised barristers who would defend the accused, amongst them, the current president of the Inter-American Court of Human Rights, Sergio García Ramírez.

The day after the suit was filed, on July 24, 2004, the Second District judge in Federal Criminal Proceedings, Julio Cesar Flores Rodríguez, without studying the legal arguments made by the prosecutor, refused to issue the relevant arrest warrants. The argument on which the judge based his decision was that according to national criminal legislation, the statute of limitations for the crime had already expired. This in spite of the fact that the UN Convention for the Prevention and Punishment of the Crime of Genocide has been in force in Mexico since 1952. This decision is currently being appealed.

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## Lack of results from the Special Prosecutor's Office

The filing of the suit against the ex-President Echeverría is without any doubt an important precedent. Nevertheless, as we have frequently said, the actual results presented by the FEMOSPP have been far from what was expected. In the last edition of *Focus* (Issue 18) we pointed out that the results of the work made by the Special Prosecutor's Office consist basically of:

- The filing of the suit in 2003 and arrest in February 2004 of Miguel Nazar Haro, ex-Director of the then Federal Direction for Security (DFS) and one of the main people responsible for "enforced disappearances" and extra judicial executions during the dirty war, who was accused by the FEMOSPP for the illegal detention in its modality of kidnapping of Jesús Piedra Ibarra and later for the illegal detention of Ignacio Salas Obregón.
- The filing of a suit against Luis de la Barreda Moreno and Juventino Romero Cisneros for the same crimes, even though they are currently fugitives from justice.
- The Supreme Court of the Nation's (SCJ) decision made on November 5, 2003 –when it overturn the negative decision made by the judge of the Fourth District of issuing an arrest warrant against Nazar Haro, De la Barreda Moreno and Romero Cisneros- which pointed out that the crime of illegal detention through 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. Therefore, while the whereabouts of the person are not known, there is no limitation of criminal liability.

If we include, together with the results described above, the filing of the suit against the ex-President Echeverría and other public servants for their possible responsibility in the June 10, 1971 killings, we can conclude that almost three years after of its creation only one person, Miguel Nazar Haro, has been detained. While Nazar Haro obtained two *amparos* (similar to habeas corpus), regarding his case, on August 24, 2004, the Judge of the Fourth District in Monterrey, Nuevo Leon, ratified that there are enough elements to initiate a trial against him for the disappearance of Jesús Piedra Ibarra, and that he be imprisoned.

Apart from this, in April a reform to the Federal Criminal Code was approved which will allow prisoners going through legal

proceedings or who have already been sentenced and who are over 70 years of age to be entitled to domiciliary custody. According to this, most of those accused of being responsible for crimes committed during the "dirty war" might be eligible to apply for this benefit and in this way, they might avoid stepping into a prison, even if they are found guilty, as may be the case for Nazar Haro.

It is also a fact that preliminary investigations have only begun in two of the 300 cases of "enforced disappearance" documented by the National Human Rights Commission (CNDH), in addition to the case of the June 10, 1971 killings. The Centre Prodh has followed up on several cases presented to the FEMOSPP and it has witnessed the Prosecutor's Office shortcomings and deficiencies in its work.

For example, more than two years ago the case of the enforced disappearances of Alicia de los Ríos Merino and of her unborn child, -she was pregnant when she was detained and after her disappearance- was officially reported to the FEMOSPP. The last time the whereabouts of Alicia de los Ríos were known was on January 5, 1978, when she was detained, at about 4:10 pm in the Cien Metros Av. and Poniente 128, Colonia Vallejo, during a police operation where more than 22 police agents from the Police and Transit General Office and the Investigative Office for the Prevention of Delinquency took part. Since then, her whereabouts and those of her child, who was due few months after her detention and disappearance, are unknown.

During all this time the Miguel Agustín Pro Juárez Human Rights Centre and relatives of Alicia de los Ríos have presented a series of actions to the Special Prosecutor's Office, assisting it in its investigative work, without obtaining efficient and immediate attention from the Office in response to these actions. This attitude has resulted in an unjustified delay in the clarification of the alleged events.

Apart from this, on July 19, 2004 –four days before the suit against the ex-President Echeverría was filed- it was publicly recognised that the main person responsible for the investigation into the alleged crimes committed by Echeverría, the ex-Federal Public Minister Américo Irineo Meléndez Reyna, was dismissed from his position as the Director of the Judicial Police in

Nuevo León in March 1998, for trying to cover up the death by torture of Gerardo Villareal Rodríguez in the hands of the State judicial police. Meléndez Reyna had also been accused in the past of drug-trafficking, qualified homicide, illegal arms gathering and drug possession. In addition, in August 1971, when he worked as Federal Prosecutor, several students demanded his destitution for protecting the ex-Federal Prosecutor, Sergio Martínez Jiménez, who had had a suit filed against him for the crimes of serious injuries, assault in an unpopulated area and rape committed against a high school student. Even though Meléndez Reyna quit his position as Federal Public Minister for the FEMOSPP in June, he still continues working in the same office, but this time as a consultant for the Prosecutor Carrillo Prieto (*Revista Proceso*, 1447, July 25, 2004).

A similar case can be mentioned regarding one of the consultants of General Macedo de la Concha, the Federal Attorney General, -who is also Carrillo Prieto's direct boss- Humberto Castillejos Cisneros. Castillejos is Marcos Castillejos Escobar's son, who was the defence lawyer for the ex-Capitan of the Army, Luis de la Barreda Moreno, who is currently a fugitive from justice in relation to two different suits filed by the FEMOSPP.

In addition to the all the above, at the beginning of last July, the Fourth Judge of Military Justice, Domingo Arturo Salas Muñoz, ordered to absolve ex-General Arturo Acosta Chapparo on the basis of the withdrawal of

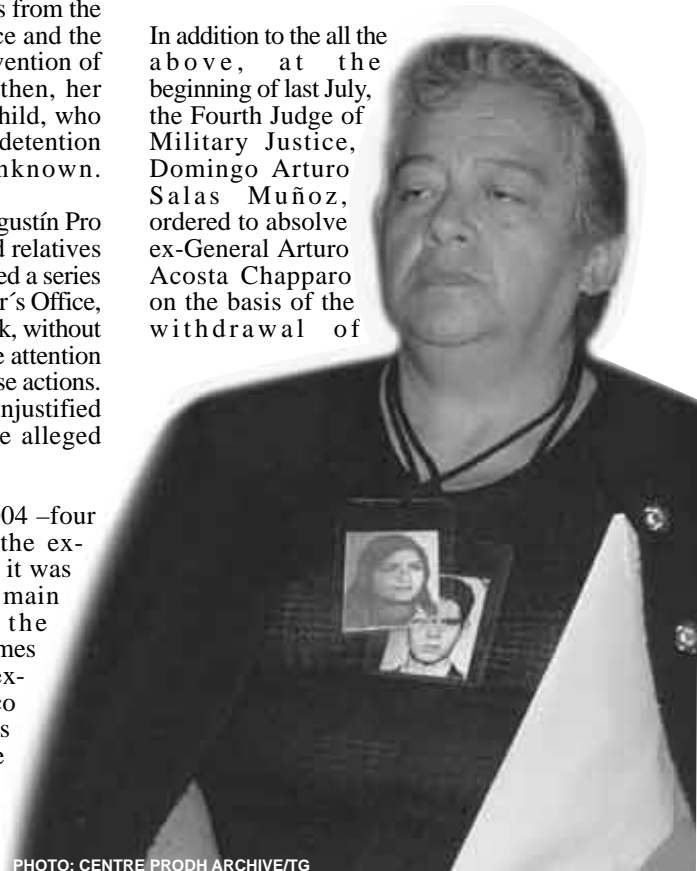


PHOTO: CENTRE PRODH ARCHIVE/TG

testimonies and invalidation of other evidence, in the trial that is being carried out in relation to the killing of 22 peasant in the state of Guerrero during the “dirty war”. Acosta Chaparro, together with the also ex-General, Mario Quiroz Hermosillo, has been imprisoned since the last administration for being related to drug-trafficking and more recently both men were sentenced to 14 years of prison for this crime. It should be remembered that they were originally accused of the killings of 143 peasants from Guerrero whose bodies were thrown to the sea during air flights that departed from Pie de la Cuesta, in Guerrero. They have been constantly pointed out as the main persons responsible for the disappearances of hundreds of people during the 70s and beginning of the 80s in the mentioned state. Fox’s reaction to the

absolution of Acosta Chaparro was just to say that the main commitment of his administration was not precisely to punish, but to create the Special Prosecutor’s Office (*La Jornada*, July 10, 2004). This confirms what has been already mentioned by the UN Special Rapporteur on the Question of Torture during his visit to Mexico, that the “Military personnel appear to be immune from civilian justice and generally protected by military justice...” (E/CN.4/1998/38/Add.2, January 14, 1998, par. 86).

### Conclusion

It is true that the creation of the Special Prosecutor’s Office generated a lot of expectations about the punishment of those responsible for the disappearances, torture,

arbitrary executions and other crimes against humanity carried out during the “dirty war.” It is also true that since the FEMOSPP was created we alerted about its flaws and deficiencies and of the need of creating a Truth Commission. After three years of work by the FEMOSPP and the Citizens Committee, which works together with the FEMOSPP, and after valuing its work and the current political and legal conditions in Mexico, it is not risky to say that we are constantly moving further away from justice and the truth about these events. Determined actions by the Fox Administration are needed so that this does not happen, including reconsidering the discussion of the creation of a Truth Commission.

## Human Rights and the Struggle for

## Their Applicability in Guerrero

The discourse in the area of human rights of those who govern the state of Guerrero is increasingly present in the different public events that take place in the state; the current political commotion has also made use of this discourse, as do those who aspire for the candidacy of the governorship in the next elections in 2005. However, practice and daily events in the state show us another reality, a reality that still breaks with the rule of law.

### The socio-economic and political context of the state

The State policies in Guerrero continue to enrich the economic power of a few and result in the impoverishment of the majority, reflecting the lack of will to create public policies that have integral human rights as a transversal axis. Extreme poverty, marginalisation, social inequalities, public insecurity, illiteracy, systematic human rights violations, the null access to justice, corruption and impunity have become the framework in which the state of Guerrero lives; problems suffered, unfortunately, by those who have the least, and particularly the indigenous peoples of Guerrero. According to the socio-economic indicators for 2000 of the National Population Council (*Consejo Nacional de Población*, CONAPO), Chiapas, Oaxaca and Guerrero make up the triangle of extreme poverty in

the country. They are also the states that concentrate a large part of the indigenous population in Mexico, with 17.2% of the population of the state of Guerrero being indigenous. The illiteracy rate amongst the indigenous population in the state is 50.5%, rising even higher in indigenous municipalities such as in Matlatónoc, where the rate is 71% and in Xochistlahuaca, where the rate is 64.7%. Guerrero also experiences very high levels of marginalisation, placing second in the 2000 National Census, with Chiapas being the state with the highest level of marginalisation in the country.

Unfortunately, the legislators of the state, who are mainly *mestizo* and insensitive, refuse to recognise the existence of these peoples, or their freedoms and rights, making it clear that the historic demands of the indigenous will continue to be unattended to and ignored, using the indigenous only as voting patrons. With the Zapatista uprising in Chiapas in 1994 and the appearance of the Popular Revolutionary Army (*Ejército Popular Revolucionario*, EPR) in Guerrero in 1996, a military strategy has also been used in Guerrero with the aim to contain social movements, persecute, repress and dismantle the guerrilla movement and use an authoritarian regime to inhibit the citizenry who organise and struggle for their human rights. The fact

that the Mexican State sees the indigenous as risk factors for national stability, for possible subversive acts, and with links to narcotrafficking is no less concerning. Consequently, the Mexican army invades and damages indigenous lands and communities in order to watch, harass and intimidate them.

The difficult economic situation, high unemployment and the lack of sustainable projects in the state also create a good set of ingredients to favour the entry of transnational corporations who are hardly interested in the human rights of the population. In this same way, the implementation of State projects has illustrated disdain for the human rights of the residents, such as the right to a healthy environment, to health, to adequate housing and to food, as well as those regarding the right to information, to be consulted and the right to participation. Such is the case in the construction of the hydroelectric dam “La Parota” which will be discussed shortly.

The creation of laws to silence social protest, such as the law that prohibits road blockades, clearly illustrate that the State’s position is to repress social movements more than to address the demands of society that have given rise to their disagreements and complaints. In this sense, it should be mentioned that laws such as that proposed





PHOTO: CENTRE PRODH ARCHIVE  
A meeting of supporters of the autonomous municipality in Xochistlahuaca.

by the Guerrero Network of Civil Human Rights Organisations, the State Human Rights Commission and the Miguel Agustín Pro Juárez Human Rights Centre to classify the forced disappearance of persons as a crime in the state legislation, has been subject to several obstacles in gaining support for this initiative so that it be revised and approved by the state congress, in spite of the fact that its objective is to attend to one of the most aberrant behaviours against a human being. Up until now, there are no signs that the proposed law will be addressed by the legislative branch, in detriment to the right to justice and truth of the victims and their family members. The need for this law is particularly evident in Guerrero where nine people have been registered as disappeared since the beginning of the Fox Administration in December 2000.

Without a doubt, it is clear that the current human rights situation in Guerrero is at a difficult moment. There are no signs of a commitment by the State to address the most elemental needs of the indigenous and peasant populations. Imposition and repression constitute the best way of governing, unsustainable development projects are implemented and there is no recognition of the plural-ethnicity and of the ways of life and customs of the indigenous peoples.

### **The case of Xochistlahuaca. Indigenous autonomy: weakening, repression and oblivion**

The autonomous indigenous movement represents an example that the indigenous

peoples are able to govern themselves and guarantee harmony and public well-being and, on the other hand, it is a visible expression of the fact that the systems of formal government are outdated, damaged, lacking solid projects of municipal strengthening and representatively.

In 2001, the results of the election held by the usages and customs of the indigenous amuzgos of Xochistlahuaca were not respected by the political authorities in the municipality, related to the Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI). As a result, the supporters of the authorities elected by traditional means began protests in front of the municipal building and were forcefully removed from the area. In this situation, the government, far from guaranteeing an open dialogue with the disputing parties, allowed for a series of bloody events to occur against the population that supported the traditional authorities. The PRI supporters attacked these individuals and they suffered serious injuries without any actions to stop the aggression from the police who were present. The corresponding complaints regarding this aggression were lodged before the Public Ministry in Ometepec by those affected so that the events would be investigated and those responsible punished.

However, the influence of the aggressors (*caciques*- informal local political bosses- and politicians of Xochistlahuaca) resulted in some cases remaining in impunity and others in having no conclusion.

In 2002, supporters of the traditional system created the Autonomous Municipality of

Xochistlahuaca, Guerrero, representing the will of the indigenous people to go back to governing themselves under their own systems. This creation was a sign that the indigenous are tired of suffering from the injustices of the formal authorities, of the *caciques* and of their trickery and abuse. However, to date, a conflict exists between the traditional authorities who declared the autonomous municipality, and the political authorities who had ruled the municipality before the 2001 election.

This conflict and the violence that erupted in 2001 have caused more inconformity within the population and contributed to reaffirming the distrust towards institutions of the State. To date, more than three years after the events, some cases of the violence against the supporters of the traditional authorities remain open and the victims of the crimes have not seen their desire for justice fulfilled. Additionally, from 2001 onward, traditional authorities have been victims of fraudulent accusations carried out to counter the demands that they lodged against the supporters of the PRI political authorities. These accusations also aim to wear them down and generate fear regarding the autonomous projects in order to take them apart more easily. To this is added the posture of the authorities in charge of the justice system who, with very inflexible legal justifications, have attempted to resolve these grave and historic problems.

Within the traditional system, the community, under certain pre-established procedures, elects the authorities and representatives of the autonomous communities. Those that occupy these community posts are individuals with a defined profile and a high moral and human quality, which legitimises their actions and responsibilities. In spite of the benefits that a project of this nature implies, the State repression towards the supporters of the Autonomous Municipality of Xochistlahuaca is increasing in force. As has been seen in this case, the lack of understanding and inaction of the State allows groups of *caciques* in the region to carry out campaigns to discredit the traditional authorities, circulate misinformation, and execute aggressions against those who sympathise with the traditional authorities.

The strength demonstrated by the communal organisation of Xochistlahuaca which supports the autonomous municipality, far from being affected by these events, has

been strengthened even more, given that the people, as the highest authority, are aware that there is no going back in this project that has guaranteed harmony and communal well-being. At the same time, it continues to be evident that the formal authorities only see in them and in their problems a resource that can be used as they wish.

Additionally, in spite of the fact that in the state of Guerrero no legislation exists that acknowledges and guarantees the rights and freedoms of the collectives rights of the indigenous peoples, the projects of the traditional authorities have a backing in conventions and international human rights treaties such as the International Labour Organisation's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, which recognises "the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live" (Preamble). Nonetheless, although Mexico has been part of the Convention 169 since 1990, the Mexican State, through its distinct authorities, has not wanted to accept any of the rights nor the organisation of Xochistlahuaca as an autonomous government.

### **The hydroelectric dam "La Parota" vs. the defence for economic, social and cultural rights**

In 2002, the Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE), the federal government and the state government reactivated the project to build the hydroelectric dam "La Parota", which would take advantage of the waters of two rivers and affect the municipalities of Acapulco, San Marcos, Juan R. Escudero, Tecoanapa and Chilpancingo in Guerrero, flooding more than 14 thousand hectares of land and displacing around 25 thousand people.

A megaproject of this nature will have as a consequence, apart from the displacement of many people, an impact on the lands and waters of the rivers used to plant and cultivate agricultural products, as well as on fishing. The possibility of using these products contributes to a higher quality of nutrition for the people in the region than

that which they will have access to when they are displaced, as they may not have land of the same quality nor the same employment opportunities. However, more than two years after the CFE entered into the area, the populations who will be affected have not been informed in a timely and adequate manner of the economic, social, environmental and socio-cultural consequences of the construction of the dam, nor have they been informed of the measures that will be implemented to indemnify them or relocate their homes, causing a lot of doubts as to the future of their lives as peasants.

At the same time, the information regarding the construction that has been distributed to the communities by workers of the CFE and the state government is very imprecise and distorted, causing confusion and uncertainty. Likewise, the government has offered to construct social projects for the communities who accept the construction of the dam, some of which have already been built, causing divisions and conflicts amongst the residents.

It is concerning that in this case, as with many others, a systematic pattern against those who struggle to defend their rights is occurring, that of the criminalisation of dissent. One example of this is that six residents in the area who have participated in the actions against the construction of the dam were falsely accused of illegal detention and theft, where an act that impeded trucks from the CFE from entering into the area was used as a justification for their detention.

Currently with the case of "La Parota", the Mexican State is responsible for the violation of the right to timely and objective information, to be consulted and participate in public policies that affect the population, apart from violating the rights to personal security and integrity, personal liberty and due process of the six individuals who were detained. If the project is completed, it will mainly affect the rights to community and *ejidal* property, to land, territory and natural resources, to food, adequate housing, health and a healthy environment, and cultural rights, in regards to being able to freely choose a way of life, in this case, that of the peasant.

In this case, the necessity for the project to be objectively evaluated in strict respect for the individual and collective rights of the residents is clear, as it is a project that, if completed, could have irreparable impacts on the population of the region.

### **Conclusion**

The human rights situation confronting the state of Guerrero, particularly regarding the lack of recognition for indigenous rights, is illustrative of the situation experienced throughout the country, while also pointing to specific problems that need to be addressed within the state. Apart from calling on the current state government, as well as the federal government, to address these problems, in light of the state elections for 2005, it is necessary that the aspirants for the state governorship are aware of what needs to be done and, above all, that they



PHOTO: CENTRE PRODH ARCHIVE  
A class being held by supporters of the autonomous municipality of Xochistlahuaca in an alternative building after PRI supporters impeded them from using the school.

## The New Law of Coexistence of Civic Culture of the Federal District:

### Unconstitutional and Violator of Human Rights

The Law of Civic Culture, which was enacted on May 19, 2004 and entered into force on August 1, 2004, is an instrument through which the government of the Federal District is attempting to “guarantee the security” of the inhabitants of the District. However, to date its application has negatively affected the respect of the human rights of the city’s residents. Since it entered into force, there has been an increase in the number of complaints presented by citizens before civil judges and before the Human Rights Commission of the Federal District (*Comisión de Derechos Humanos del Distrito Federal*, CDHDF) regarding human rights violations, with the CDHDF receiving 12 complaints in the first 10 days of the application of the law.

Before the law was approved, the Centre PRODH presented observations concerning the initiative so that they would be taken into account when the law was passed. These observations were made from a human rights perspective and based on the opinions regarding the initiative that were issued by the Institute of Security and Democracy (*Instituto para la Seguridad y la Democracia*, Insyde). The following is a list of the observations made regarding the law:

- Article 14 states that “in order to preserve the public order, the Public Administration of the Federal District will promote the development of a Civic Culture based on the principles of co-responsibility, solidarity, honesty, equality, tolerance and identity,” with the objective of promoting the active participation of the residents in the preservation of public order, amongst others. With this, the law tries to impose an obligation on the residents that does not correspond to them, since, according to the Mexican Constitution, public security is a function pertaining to the Federation, the Federal District, the States and Municipalities.
- The treatment of minors goes against the obligations assumed by the State in the UN Convention on the Rights of the Child, since it establishes that minors between the ages of 11-17 years old can be held administratively responsible for infringements of the law and that they are

not exempt from the application of restrictive measures. In this regard, Article 43 indicates that detained minors can only have a representative of the Public Administration of the Federal District named to assist and defend them after up to four hours have passed without the guardian or person responsible for the minor appearing.

- Article 6 of the law established the possibility of a double trial, since it states that the responsibility determined for violating this law is independent of any other legal responsibility from other spheres.

- Article 8, part II establishes that the Head of the Government of the Federal District will name the judges of the civil courts. However, this should be done by a professional body, such as the Council of Civil Justice of the Federal District, who would establish the profile and requisites to design, promote and appoint these officials.

- The law establishes a series of infringements and financial sanctions and/or detentions (articles 23 and 25) that more than contributing to the coexistence of the residents of the city, appears to be aimed at sanctioning creativity and the lack of spaces for young people to get together, and to sanction indigence, the lack of employment opportunities, the lack of alternatives to street vending and other similar activities.

- Some of the behaviours that are sanctioned in the law are already classified in the Penal Code of the Federal District and the Federal Penal Code.

- The procedures established in the law could violate the Constitution. The law does not explicitly establish guarantees for the supposed or probable offenders who could be “presented” by police agents, treating them as if they had been caught in the act of committing a crime. In many cases, this could lead to, as already occurs, arbitrary detentions and summary trials for those who are detained, through the use of so-called oral trials during the time that they wait to be attended to by the civil courts, with a high

risk of not respecting the presumption of innocence, legal guarantees and due process. Likewise, corruption by the police themselves may lead them to arbitrarily detain a person at the request of another person just to hassle them.

- The law lacks an independent mechanism to control the actions of the authorities. Article 78 of the law delegates the Council of Civil Justice in the supervisory role regarding the law, yet the members of the Council are part of the Government of the Federal District and even the representatives of society are named and removed by the Head of the Government of the Federal District, thus giving them the responsibility of applying the law but also of monitoring themselves.

Before the law was approved, these observations, amongst others, were presented before the Commission of Public Security of the Legislative Assembly of the Federal District, requesting that they abstain from approving the initiatives referred to previously as they contained serious constitutional problems and potential human rights violations for the residents of the Federal District. Our objective in doing so was so that the legislation be structured within the human rights framework, unfortunately this was not the case. In fact, most of the complaints regarding the law that have appeared in the media involve the corruption of police officials who extort individuals who work in the streets, accepting money in exchange for not detaining them, aggravating, rather than improving the public security problem in the Federal District.<sup>1</sup>

(1) The publication of this information by the Centre Prodh in the national press resulted in a debate with the authorities in charge of public security in the Federal District. As a result, the Centre is in the process of sending a written petition to these authorities so that the Law of Civic Culture be reformed by the Legislative Assembly of the Federal District.



## 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.

**Convergencia.** *Convergence*, Small centre leaning party formed in 1999.

**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.

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

**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.

**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. A family controlled party that does not necessarily reflect the tendencies of Green Parties present in other countries.

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.

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@ajsocial.org](mailto:prodh@ajsocial.org)**

**Web page: <http://www.ajsocial.org/PRODH>**

**Director:** David Velasco

**Contributors to this issue:** Carmen Herrera,  
Emma Maza, Maureen Meyer, Lilia Moreno,  
Claudia Ordóñez, Arturo Román, Dulce Sotelo

**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.

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