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# FOCUS

## Human Rights in Mexico

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### In This Issue

#### 1. A Setback for Democracy: The National Human Rights Commission's Re-election Process.

The re-election of Dr. Jose Luis Soberanes as the president of the CNDH by the Senate, despite the negative evaluation publicly expressed by a large group of human rights organisations, is concerning as this decision shows that the autonomy of the Mexican Ombudsman must be improved.

page 1

#### 2. Public Security in Mexico and the Executive's Proposal for Judicial Reform

The Centre Prodh issues an analysis of the Judicial and Public Security Reform proposed by President Fox in the light of human rights obligations and recommendations contemplated in international human rights instruments.

page 4

#### 3. Contamination of the Bay of Zihuatanejo Under the Protection of the State Government

A series of negligent permits emitted by local authorities and the lack of control from federal competent offices, result in environmental strains and damage to the population's health in one of the most concurred bays in the country.

page 5

#### 4. The Human Right to Water in Mexico: Plenty of Room for Improvement

Despite the very complicated situation of water in the country, the Mexican Government has not taken measures to stop growing inequalities as well as the increasing privatisation of water services due to the lack of an adequate infrastructure.

page 8

#### 5. Continued Shortcomings, an Analysis of the Government's Fulfillment on Human Rights Issues During its Fourth Year in Power

The recent Fourth Annual Government Report present by President Fox still demonstrates a superficial approach to the State's human rights obligations and the need of a revision of several areas that this article pinpoints.

page 9

### Four Years of the Fox Administration Show Few Results in the Area of Human Rights

In his Address to the Union on September 1, 2004 to present the Fourth Annual Report of the Government, President Fox stated "the consolidation of our democracy and the strengthening of the rule of law are founded on the respect for human rights." He then listed a series of activities implemented by the current government to advance on the situation of human rights in the country, including receiving the *Assessment on the Human Rights Situation in Mexico* by the OHCHR, the government's positive relationship with the CNDH, and the proposals to reform the constitution in the area of human rights, amongst several others.

Although it can be stated that the government has taken several steps in 2004 to respect, guarantee and promote human rights in the country, the articles in this edition of *Focus*, as well as the previous editions for this year, demonstrate that these actions fall short in terms of implementing actions to assure structural changes to improve the human rights situation in Mexico. For example, while the government received the *Assessment on the Human Rights Situation in Mexico*, our analysis has shown that many of the recommendations issued in the *Assessment* have not been implemented

or have only been partially implemented. Likewise, José Luis Soberanes, the Ombudsman for the CNDH, was recently re-elected through a process that lacked adequate mechanisms for the participation of civil society and in a situation where many human rights organisations in the country had expressed their critique of Soberanes' work during the current period. Additionally, the proposals praised by the government to reform the constitution in the area of human rights do not fully comply with international and regional human rights instruments and the government has failed to implement adequate measures to protect economic, social and cultural rights in the country, including the right to a healthy environment and the right to water.

As we head into the fifth year of the administration of President Fox and the campaigning for the presidential elections in 2006 begin to take on more force, it is hoped that in this important year of his administration, President Fox will use the opportunity to convert his discourse on human rights into concrete actions and assure that the bases are in place for the future in order to establish structural changes to radically improve the human rights situation in the country.

### A Setback for Democracy: the National Human Rights Commission's Re-election Process.

Mexico has the largest and most expensive System of National Human Rights Protection in the world. However, the autonomy and effectiveness of this system have been seriously questioned, especially regarding the independence of local Human Rights Commissions. According to article 102-b of the Mexican Constitution, reformed in 1999, the Senate is in charge of proposing and electing the Ombudsman. This reform does not guarantee the participation of civil society in the selection procedure and the election of the President of the National Human Rights Commission remains in the hands of the Senate Human Rights Commission and those who compose it.

Last October, due to pressure by some sectors of the society, the Senate's Commission on Human Rights took the political decision to open up the process to civil society. Over a fifteen-day period of hearings, some human rights organisations expressed arguments for and against



PHOTO: NGO Forum "The CNDH we all want" held on October 21st in the Centre PRODH.  
CENTRE PRODH ARCHIVE/GG

Dr. Soberanes' re-election and presented their candidates to the Senate, the Centre PRODH amongst them. However the Senate's Commission on Human Rights - after just a one-day deliberation-, announced its decision to re-elect Dr. Jose Luis Soberanes as the Mexican Ombudsman (2004-2009), instead of opening a list of three candidates, among which a final choice could have been made on November 15, 2004.

As a result, there is a widespread feeling of frustration among the civil society organisations that took part in the process, especially as the final decision was taken behind closed doors and they did not receive any comments or feedback from the Senate regarding the following questions this article develops:

#### A poor assessment of the administration of the CNDH (1999-2004)

The CNDH is an autonomous organism created in 1990 in order to guarantee the protection and promotion of the human rights recognised by Mexican Law. Generally speaking, a human rights institution should have competence to hear complaints regarding acts or omissions of an administrative nature by any official or public servant, apart from those of the judiciary. In the case of the CNDH, it has no power in electoral, labour or jurisdictional matters. A close analysis of the Soberanes' administration over the past five years must be the starting point of any serious assessment.

Firstly, if one draws a comparison between the budget assigned each year to the CNDH with the results of the same administration in terms of the human rights situation in the country, it is obvious that the present system is suffering from high levels of inefficiency. While, according to the National Budget of the Federation, the CNDH received a public

budget that amounted to **62.9 million** dollars in 2004, the Office of the UN High Commissioner for Human Rights (OHCHR) was granted a **20 million** dollars budget. In this regard, the range of actions and responsibilities the UN Office encompasses goes well beyond the mission of the Mexican human right institution. Nevertheless, on October 26 2004, Soberanes, in his attempt to justify the budget of his administration, declared publicly that: "The Office of the United Nations High Commissioner for Human Rights spends 40 million dollars (a year) on wages and some 80 million on its specific programs. Also, this UN Office does not emit recommendations or special reports; it has other functions" (*La Jornada*, October 27). This remark, which presents different data than that which is publicly reported by the OHCHR, also illustrates the Ombudsman's poor knowledge of the work of this Office.

Secondly, in many cases, the CNDH resolves complaints through processes of friendly (or amicable) statements, which have been valued as excluding the claimant from the process. While the 1993 UN General Assembly *Paris Principles* outline the possible application of amicable statements as one of the faculties of human rights institutions, the CNDH has a tendency to use this conciliation process excessively when resolving a complaint, rather than issuing recommendations, neglecting in this way some aspects drawn by the Paris Principles. For instance, in 2000, the CNDH processed 10 times more amicable statements than the recommendations it emitted. This proportion decreased afterwards, remaining nonetheless high: in 2001 and 2002, they were 5 times higher and in 2003 three times (CNDH Annual Reports).

Usually, a settlement is negotiated between the CNDH and the authority being denounced. According to the Paris

Principles, the Human Rights Institution should "[Inform] the party who filed the petition of his rights, in particular the remedies available to him, and [promote] his access to them". In reality, the claimant has very little guarantee that a friendly statement will be enforced, as the CNDH does not systematically follow up its resolutions, whatever they might be. In this regard, it is interesting to note that in 2003, the CNDH processed **156** amicable statements out of **1942** accepted complaints and only issued **52** recommendations (See 2003 Annual Report, CNDH, Mexico).

On the other hand, the so-called National Human Rights Institutions (NHRIs), like the CNDH, should improve the implementation of conclusions and recommendations of international and regional human rights mechanisms at the national level through the strengthening of national capacity as well as encouraging the ratification of instruments and ensuring their effective implementation. Similarly, they have a critical role in the reporting process either through contributing to the preparation of States party reports or, when necessary, expressing independent opinions.

Up to now, CNDH recommendations remain very focused on National Law, and the mention of international instruments is hardly developed. So far, not only does the use of international instruments in CNDH recommendations lack systematised criteria, but they also miss the opportunity to offer an accurate reference to the recommendations issued by the UN Treaty bodies, its other human rights bodies as well as the special mechanisms established by the Commission on Human Rights. Additionally, CNDH recommendations generally do not explain why an act has been classified as a "violation of human rights" which, to a certain extent, prevents complainants and the authorities denounced, from gaining a full understanding of the violation.

For example, if one analyses recommendations 36/03 and 49/03 which respectively correspond to the case of a mother's death while giving birth and the death of a new born child, the following characteristics can be pointed out: the International Covenant on Economic, Social and Cultural Rights is referred to in its articles 12.1 and 12.2, as well as the Additional Protocol of the American Human Rights Convention on Economic, Social and Cultural Rights (articles 10.1 and 10.2). However, the mentioned international and regional instruments are simply paraphrased and the specific reason why the authority is being denounced is never clearly expressed. Additionally, CNDH recommendations do not allude to *all* the International Instruments available according to the case being addressed.

### **Necessary points the Human Rights Protection System should encompass**

According to the Paris Principles, one of the main characteristics that NHRIs should encompass is a better understanding of the human rights institutions' importance not only by citizens, but also by governmental and local powers. However the legitimacy of the CNDH in Mexico has been more than questioned. Indeed, from 2000 to 2003, the number of complaints, which is an indicator of confidence, passed from 4473 to 3518. On the other hand, comparing the number of recommendations emitted by the CNDH before and after Jose Luis Soberanes was elected allows one to draw some conclusions on the overall work of this human rights institution. In the reporting period of May 1995- May 1996 (under Jorge Madrazo's administration), the CNDH emitted **116** recommendations. The year after, it emitted **126**. In the May 1997- May 1998 (under Mireille Roccatti's administration), there were **136** and in 1998 (January to December), the number fell to **114**. However, these figures are much higher than the number of recommendations issued under Soberanes: **26, 38, 28, 52** recommendations from 2000-2003 respectively.

In this regard, the CNDH's image has been focused on publicity in the media, rather than on constructing the framework of an institution to provide real human rights protection in the country. For example, from March to August 2004, the CNDH had **44** paid insertions in the most important newspapers in Mexico and most of the insertions had the photograph of José Luis Soberanes as the central part of the article. In April 2000, the OHCHR highlighted the

fact that the CNDH would benefit from reinforcement in the documentation it publishes to promote remedies for human rights violations: "CNDH recommendations sometimes receive wide press coverage, particularly when they touch on sensitive topics or regions in the country (...). The CNDH does not suffer from a lack of profile in Mexico. Rather, the follow-up that would do it most good is in the area of actively using its reports to promote remedies. For instance, CNDH reporting could conceivably be used by the federal Senate or Chamber of Deputies to establish criteria for deciding whether specific states were eligible for certain federal funds."

Additionally, the CNDH has not been open to accepting criticism that several national and international organisms have made about certain policies and particularly in regards to internal processes. In the Mission Report regarding the Mexican Human Rights Commission, issued by the OHCHR on June 2001, the Special Advisor, Brian Burdekin stated that the staff of the CNDH, including senior management, should be more available and should demonstrate concrete results on thematic issues by working with civil society and the State Commissions in the elaboration of proactive initiatives.

One clear example of this is that the Special Report on the case of the murdered women of Juárez was issued by the CNDH without taking into account past studies done by several local organisations, nor the Report issued by the prosecutor designated for the Genocide of Women in Juárez.

Additionally, the president of the CNDH recently has made declarations against the work of certain human rights organisations and his relation with some State Commissions is very difficult, such as in the states of Querétaro and Chiapas.

### **Guarantees for accountability**

The government needs new ways to demonstrate accountability for human rights violations and this can clearly be done through the National Human Right Institution. On the one hand, accountability is definitely enforced by the public opinion. An autonomous institution such as the CNDH has the opportunity to create an alternative space to question whether the State is respecting the rights of its citizens.

One of the most important roles of a Human Rights Organism is the establishment of political spaces in which other human rights

activists can operate. Furthermore, a strong link with civil society helps in the construction of the legitimacy and accountability of the Institution. Therefore, it is necessary to create healthy links between civil society and Human Rights Bodies, as they could play a role of being constructive mediators between the State and society.

On the other hand, accountability is also measured by how transparent the institution is, not only in the use of public funds but also in the manner in which they address human rights violations. The actual CNDH is not showing a positive attitude in this matter, as they do not openly disclose the use of all of their funds. Furthermore, the CNDH maintains the files of the complaints in total privacy arguing that they want to protect the victim's identity. As a result, it becomes impossible to know the procedures that it is using to emit a recommendation or an amicable statement. Moreover, the CNDH has not been open to inserting into its Organic Law the new law regarding Transparency and Access to Public Information created by the present government.

### **Conclusion**

The re-election on October 28 of Dr. José Luis Soberanes as the president of the CNDH exposes the gaps and failures of an entire system. He has shown, through his five years in office, that the Commission needs to be strengthened in several areas. This is particularly true given that the Ombudsman should really confront the State, be autonomous and take advantage of the legal capacities that an institution of this nature has, such as proposing legal reforms to the Senate regarding human rights.

As a Human Right Organisation, we are disappointed that the opportunity to strengthen the National System of Protection for Human Rights was addressed so lightly by the Senate. We believe that the defence of human rights is a serious matter that should not become part of the discourses of political parties regarding their own interests. Rather, it should be a primary matter in a country that supports democracy and rights. We hope that with his re-election, Soberanes uses the opportunity to truly strengthen the Commission and establish more effective and concrete measures to promote and protect the human rights of the citizens of the country, rather than simply a continuation of the work of the institution which has demonstrated itself to be deficient.



## Public Security in Mexico and the Executive's Proposal for Judicial Reform

In March and April of 2004, the Executive branch presented to Congress a series of proposals of amendment to reform the criminal justice and the public security systems of Mexico. This was in response to pressure by large sectors of society and the international community to carry out a thorough judicial reform in the country.

In December of 2003, the representative for the Office of the UN High Commissioner on Human Rights (OHCHR) in Mexico issued a *UN Assessment on the Human Rights Situation in Mexico* which called "...for a fundamental reform of [the] ...country's justice system" (UN WIRE; "U.N. Report A Blueprint For Human Rights Reform In Mexico"; 9 December, 2003). In regards to this, the UN Assessment

recommended that the Mexican government draw up a National Human Rights Programme (NHRP) based on the Technical Cooperation Programme between the OHCHR and the Mexican government and, more specifically, on the recommendations contained in the UN Assessment.

The main objective of the proposed judicial reform is to transform the current inquisitorial (predominantly written) system, into an accusatory (oral) system. Unfortunately this reform does not work to improve the most urgent needs related to public security. As will be explained below, this system should instead be an integral reform that looks to reinforce judicial independence, the creation of a mechanism of accountability and/or transparency, and access to justice and equal treatment. Likewise, the reform's emphasis is more focused on the reform of the criminal system than on public security issues.

### Limitations of the reform

In regards to the reform, the manner in which the public prosecutor (*Ministerio Público*, MP), works

is not altered in this proposal. Within the current accusatory system, there exists an imbalance in the situation that a suspect faces during the investigation of a crime as the MP and the judicial police carry out this investigation. The process is disproportioned in that the suspect has almost no intervention in his/her defence during the preliminary investigation (*averiguación previa*), of an alleged crime. In standard procedure, this preliminary investigation, if accepted by the judge, becomes the basis of the judicial procedure itself (Legalized Injustice, Centre PRODH & Lawyers Committee for Human Rights, 2001). This procedure violates the principles of due process established in the International Covenant on Civil and Political Rights (ICCPR); in the American Convention on Human Rights, and other treaties, because it limits the defence's capacity to challenge the evidence thus placing the accused at a procedural disadvantage. In addition, it encourages the MP and judicial police to fabricate evidence in order to secure convictions (Amnesty International, Memorandum to the Mexican Federal Congress on reforms to the

Constitution and criminal justice system, AMR 41/032/2004, 2004).

Secondly, the reform does not diminish the number of situations in which preventive custody is applicable. The excuse used to apply preventive custody is to avoid the "evasion of justice". Its excessive and indiscriminate use has not only undermined its efficiency, but its application also breaches the principle of innocence contained in the international human rights instruments. This custody is, in fact, an advanced sentence that is not based on a judicial decision but on mere assumptions. The Inter-American Commission on Human Rights (IACHR) has resolved that preventive custody is an exceptional measure because it affects, not only the principle of innocence, but also of due process, including the right to defence. According to the IACHR, preventive custody should only be applied in cases when there is a reasonable cause to suspect that otherwise the accused would evade justice, create obstacles during the investigation, or would destroy evidence. (*J.A. Giménez v Argentina*; Sentence of the Commission, March 1, 1996). In most cases, when the preventive custody is wrongly applied, the judge that ordered it is not punished and the accused/suspect suffers the consequences.

Although in the proposed reform the principle of innocence is recognised in article 20 of the Constitution, this article has exceptions that lead to the application of preventive custody under different circumstances that distort the essence of this principle. The first exception is the use of preventive custody in the case of serious crimes. These crimes include: homicide, sabotage, drug trafficking, kidnapping, amongst others. However, this list will increase according to the proposed judicial reform, thus opening up the possibility of being accused of a serious crime and not being able to benefit from this principle. The second exception establishes that preventive custody applies when a suspect of a common crime cannot guarantee reparation, that is, of making amends or giving satisfaction or compensation for a wrong or injury. This exception not only violates the principle of innocence, but it also is a discriminatory measure that violates the principle of the right to equal treatment. Finally, the third exception applies if the judge, in a discretionary manner, considers it necessary to order preventive custody. This option raises the issue of a lack of legal certainty since it does not establish minimum



PHOTO: CENTRE PRODH ARCHIVES

requirements that regulate this discretionary faculty.

Thirdly, the proposed reform also addresses the principle of equality before the law in a different manner. This is because the proposal to modify article 16 of the Constitution includes the creation of a rule of exception for the case of organised crime that “takes into account the serious risks that the equal implementation of the accusatory model of investigation, persecution and sanction of these crimes could bring”. It proposes to establish in the Constitution that in regards to organised crime, this will be regulated by the Penal Processing Code and Penal Code. This is particularly serious both due to the creation of a rule of exception as well as the ambiguity in the definition of said type of delinquency, which has permitted a discretionary application of the definition of organised crime in the federal law.

These modifications being approved by Congress would lead to the existence of three different Constitutional types of judgment: one for the full guarantees for common crimes, one for serious crimes and one for organised crime.

Apart from that mentioned above, the public prosecutor has retained its dual faculty of being both the investigative and the accusative branch. This goes against the principle of separation of authorities, typical of an accusatory system, where there is an authority in charge of the investigation and a different one that makes the accusation. This separation is important given that they are two faculties that are incompatible and create disadvantages for the accused/suspect.

In relation to the National System of Public Security, the proposal contemplates the creation of a new police force under the

basis of the Procedural Law for Federal Police. This police force would unify two of the current police forces; the Federal Agency of Investigation (*Agencia Federal de Investigación*, AFI), and the Federal Preventive Police (*Policía Federal Preventiva*, PFP). The MP would have this new police force under its supervision, and at the same time, the police force would have operative autonomy in its investigative tasks. This would give the new police force parallel power to the MP, presenting the risk that these reforms would create a new force with wide ranging powers without strengthening the mechanisms of monitoring that it carries out.

As the Mexican government has ratified most international treaties and covenants on human rights, it is obliged to recognise and apply their primacy over national legislation. In relation to this, the proposal does not overcome the longstanding ambiguity of the primacy of human rights because it defines “...human rights in the terms in which they are set out in the Constitution, without reference to international treaties...[and therefore] it fails to adequately ensure access to the protection afforded in the international human rights treaties” (AI, op cit). The failure to clarify their primacy at the Constitutional level goes against the recommendations included in the UN Assessment mentioned previously.

One final aspect that the proposed reform does not consider is the prohibition of the participation of military agents in civilian tasks. The current government of the United States promotes this tendency and it continues to encourage military practices, programs, and doctrine which confuse civilian and military roles (WOLA; “Blurring the Lines”; September 2004). This is worrying in Mexico because of

reoccurring accusations of military agents committing serious human rights violations in the country. When a military agent is implicated for human rights violations while carrying out functions within the civilian sphere, the procedure is for civilian authorities to declare themselves incompetent to investigate the allegations. Therefore, most of the time, the cases are sent to the military jurisdiction and result in a breach of the principle of due process and impartial justice. The UN thematic mechanisms, the OHCHR, and the IACHR have “...repeatedly called on the authorities to restrict military jurisdiction and ensure a strict separation of military tasks from police law enforcement functions” (AI, op cit). Despite this, the current administration continues to incorporate members into the military police forces, like that of the latest naming of high commanders as members of the PFP (PRODH, Press Release, October 2004.)

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## Conclusion

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Although this analysis is not based on the totality of the proposed reforms, what has been explained here shows significant failures that do not reflect the recommendations issued on this matter by international and regional human rights mechanisms. Furthermore, the proposal does not represent an integral reform of the justice system in the country. An integral reform should fulfil the recommendations issued by the human rights mechanisms and contemplate not only prevention and protection programmes, but also social and economic programmes, as well as trying to stop corruption and other rooted practices in the country. Most of all, an integral judicial reform should mainly be based on the principles contemplated in the international and regional human rights instruments.

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## Contamination of the Bay of Zihuatanejo Under the Protection of the State Government

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Respect for a healthy environment is a pending issue for the current administration of the Mexican government. This has allowed individual interests, under the protection of state governments, to develop projects that affect in an irremediable way the natural resources of the country. A clear example of this is what is currently occurring in the Bay of Zihuatanejo in the state of Guerrero and the struggle of the

residents of the town to protect the environmental equilibrium that they have achieved with the bay, given that this is one of the main means of subsistence for the fishermen, boatmen and owners of small business that live in the area.

In this situation, with the motive of promoting the two towns of Ixtapa-Zihuatanejo as a tourist destination, a series

of primarily urban development measures of both the private and public sector have been occurring. These have resulted in several negative environmental impacts that constitute violations of human rights such as the right to a healthy environment, to health, to work, to just retribution, to liberty of movement and to development, as recognized in regional and international human rights instruments.

## Background information and the contamination of the Bay

In the past few years, the contamination of the water in the Bay of Zihuatanejo has increased, mainly due to the discharge of residual waters that have not been treated or have been deficiently treated. A majority of this residual water comes from the municipality's treatment plants.

Since the mid 70's, a part of the public sewage system of Zihuatanejo has emptied out directly into the *Bahía del Puerto* (Harbor Bay) without previously relying on treatment for its disposal. The system also does not have the authorisations required by the applicable environmental legislation regarding environmental impacts and the regulation of national waters<sup>1</sup>

Since 1996, the residents of Zihuatanejo have denounced this situation and in this year the Federal Environmental Protection Agency (*Procuraduría Federal de Protección al Ambiente*, PROFEPA) received the highest number of complaints regarding contamination of the bay. In 2003, PROFEPA itself made public its opinion regarding the water contamination of the Bay of Zihuatanejo. In this regard, José Iturriaga de la Fuente, the then General Director of the Federal Maritime Lands and Environmental Impact Office (*Zona Federal Marítima Terrestre e Impacto Ambiental*) of PROFEPA stated: "The Bay of Zihuatanejo has problems because its treatment plants for residual waters are insufficient and because part of the water that they discharge does not comply with waters norms for recreational use; this causes a high level of illnesses"<sup>2</sup>

Apart from this, different institutions specialised on this matter such as: PROFEPA, the National Ecological Institute of the Secretariat of the Environment and



PHOTO: Drawing up sediment that is accumulating in the bay. CENTRE PRODH ARCHIVE/Erica Serrano

Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*, SEMARNAT), the Department of Ocean Contamination of the General Office of Naval Oceanography from the Secretariat of the Navy, and the Institute of Applied Ecology of Guerrero, amongst others, have carried out studies on the quality of the water of the Bay of Zihuatanejo. The results of these studies show high levels of contamination, with repercussions on the health of the residents of the area and on the fishermen and boatmen who depend on the bay for their livelihood. In this regard, several studies conducted in 1999 by the Department of Ocean Contamination of the Secretariat of the Navy cite levels of faecal matter in the bay that are well beyond the limits permitted under Mexican norms. In one study, the Department states "from a bacteriological perspective, both places (the entrance to the estuary and the canal) are considered inapt for recreational use and for fishing, given that they put at risk the health of the people that use the waters and products from the water." (September 30, 1999).

Apart from the problem of the treatment of residual water, there are other factors that worsen the contamination of the bay and the exploitation of the natural resources of the harbour. One of these is the construction of the tourist complex called Puerto Mío, which includes three hotels, condominiums and villas, a Marina for more than 100 ships, a pool, restaurants, nightclubs, parks and other establishments. The construction of this complex was authorised in 1994 by the National Ecological Institute (*Instituto Nacional de Ecología*, INE) after having performed an environmental impact assessment. However, the Punta del Mar agency, which is in charge of the construction of the complex, has not fully complied with that stipulated in the authorisation.

Within the permits required for the development and operation of Puerto Mío was the obligation to have its own residual water treatment plant with its own Registry for Discharge before the National Water Commission (*Comisión Nacional de Agua*, CNA) and to implement the security measures necessary to avoid the contamination of the water, air, and soil caused by the construction and operation of the project. Nevertheless, to date, none of these conditions have been complied

with, worsening the contamination in the bay through the direct discharge of the residual waters of the tourist complex.

Likewise, the construction of the gas station of Puerto Mío was carried out without the necessary authorization in regards to its environmental impact and without a concession to use the Federal Maritime Lands Zone. In this case, the permit for the development of the Puerto Mío tourist complex was not granted until April of 1994, after the environmental impact assessment had been done, while the construction of the gas station began in 1991.



PHOTO: Fishermen in the Bay of Zihuatanejo. CENTRE PRODH ARCHIVE/Erica Serrano

This goes against environmental law in Mexico, which requires that an environmental impact assessment be performed before the construction of a project begins.

Notwithstanding that expressed above, the gas station of Puerto Mío has been operating for several years, harming the quality of the water of the Bay of Zihuatanejo with dangerous substances (hydrocarbons). This is due to the fact that by unloading the gasoline directly from the ships, part of the

1. Art. 21 of the General Law for Ecological Balance and Environmental Protection and Art. 86, Section IV of the National Waters Law.  
2. Taniguchi, Hanako, "Polluted Beaches Found," *Reforma*, February 3, 2003.



gasoline falls into the water, which, apart from causing contamination, also implies a risk for other natural resources, the aquatic flora and fauna, the marine ecosystem, and human health, since the gasoline is stored in large quantities and, by its own nature, is corrosive, inflammable, explosive and toxic.

Another element which increases the contamination of the bay is the construction of a wall of rock of approximately 72 metres, known as a breakwater, which forms part of the infrastructure required to construct a pier for cruise ships within the tourist

waters that have been poorly treated (emptied mainly by the Canal of *la Boquita* and the Treatment Plants of the Potable Water and Sewage Commission of Zihuatanejo) from leaving the basin of the bay.

One of the most visible consequences of this serious contamination problem in the Bay of Zihuatanejo was the massive death of fish that occurred June 17-23, 2002. Statistics have registered as much as 2,500 kilograms of dead fish in less than four days during this period. The engineer Arturo Martínez Nateras, a representative of the South-Southeast Region of the Operation Group of the National Consultative Council for Sustainable Development from SEMARNAT, denounced these events in a communication to the President of Mexico on July 22, 2002. This communication was later sent to PROFEPA on August 14, 2002, where an inspection of the area was ordered, although the results of said inspection remain unknown.

#### Community actions

In light of the seriousness of the situation, the residents of Zihuatanejo have maintained a campaign to denounce the situation before the municipal, state, and federal authorities and jointly with the Network of Non-governmental organisations of Zihuatanejo (*Red de Organizaciones no gubernamentales de Zihuatanejo*, ROGAZ), lodged a criminal complaint in December 2003 before the Special Prosecutor's Office for Crimes Against the Environment (*Fiscalía Especial de Delitos contra el Ambiente*) which is part of the Federal Attorney General's Office (*Procuraduría General de la República*, PGR). However, almost a year has passed since the complaint was presented and concrete results have yet to be seen.

Local and state authorities have also not attended to the complaints of the individuals who have been mainly affected by this situation, yet they have granted with ease all of the facilities necessary for the construction of the tourism complex Puerto Mío which has implicated a disproportionate use of the Bay of Zihuatanejo in detriment to the natural resources of the bay and benefiting only a few investors.

#### Conclusion

As has been illustrated in this article, the contamination of the Bay of Zihuatanejo in the state of Guerrero has been verified in a reliable manner by different authorities on the issue who have confirmed that the high level of contamination of the waters of the bay has caused damage and deterioration to the natural resources found there. The contamination has also resulted in the massive death of fish and the disappearance of mollusc species, affecting the livelihood of many fishermen and vendors in the harbour. Likewise, the illegal dumping of residual waters into the Bay of Zihuatanejo has caused damage to the natural resources, ecosystems and marine environment. Additionally, the high levels of contamination in the bay cause serious adverse effects to the health of the people who have contact with it. Nevertheless, the government has taken very few steps to address this situation, violating the right to a healthy environment of the residents of the area.

In accordance with article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Everyone shall have the right to live in a healthy environment and to have access to basic public services." The right to a healthy environment is defined as the possibility of everyone, as an individual and collectively, to have the necessary conditions for their health, development and well-being, derived from the obligation of the State to preserve, improve and defend the environment, in the benefit of communities, society as a whole and future generations, as well as ensuring the possibility of individuals and communities to directly participate in the processes of sustainable development and to have effective access to the information and the judicial instances available by the State<sup>3</sup>. However, the respect for this right is still pending in the case of the Bay of Zihuatanejo and will not be adequately attended to until the governmental policies regarding the protection of the environment consider that the respect for the right to a healthy environment does not include, nor can it depend on, the investments and economic projects that benefit only a few and negatively and irremediably affect the right to a decent and just life of the rest.

complex already mentioned. Since the beginning of the construction of this breakwater more than 10 years ago, different sectors of the community, mainly the fishermen, have expressed their disagreement with it. They have complained that apart from placing pilings of rock and concrete onto the sea floor, privatising a part of the bay, and causing problems of sediment in the sea floor in detriment of sedentary species such as clams and oysters, the construction obstructs the circulation of the sea currents and prevents the residual

3. The definition that we use here of this right is an interpretive summary of the references to a healthy environment and human rights found in the Stockholm Declaration, the Rio Declaration on Sustainable Development, the Final Report of the Special Rapporteur on Human Rights and the Environment (better known as the Ksentini Report), the Draft Declaration on Human Rights and the Environment, and the background papers 1,2,5, and 6 of the Seminar of Experts on Human Rights and the Environment, hosted by the UNEP and the OHCHR, from January 14-16, 2002.

## The Human Right to Water in Mexico: Plenty of Room for Improvement

According to the UN Committee on Economic, Social and Cultural Rights General Comment 15 (E/C.12/2002/11; 20 January 2003), the human right to water "...entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." (par. 2). It is "...inextricably related to the right to the highest attainable standard of health and the rights to adequate housing and adequate food." (par.3). Since the Mexican State has ratified the International Covenant on Economic, Social and Cultural Rights, it is therefore bound to respect the principles and obligations enshrined in it. Nevertheless, the human right to water in Mexico is not fully complied with and the Mexican State has not completed its international obligations in this respect, as will be explained below.

### Deep inequalities

Inequalities concerning the human right to water are increasing in the country. Marginalised sectors of society, mostly in rural areas, pay much higher prices for water than people who have access to infrastructure, mainly in urban areas. Most efforts to improve water distribution and access are directed towards the cities where political and administrative powers are concentrated. This is not surprising if it is taken into consideration that 80% of water obtained from the Valley of Mexico is for public use (in urban areas), while the agriculture use in rural areas is reduced to 16%. However, the sharp scarcity of water in Mexico demands that the State be capable to intervene, as well as to carefully manage the resource.

An example is the case of the indigenous Mazahua women from the Valley of Mexico. Last September, they blockaded the entrance of the "Berros" water plant based near their community in order to prevent a chlorine provision from being delivered. They demanded an 80.000 to 200.000 USD compensation for the damage of more than 300 hectares of their crops caused a year ago by an overflow of a dam. This case is especially relevant because the "Berros" plant is one of the strategic points of the *Cutzamala Water System*, the most important source of water supply in the country. This system carries a flow of 15 cubic meters per second from several dams (*Villa Victoria*, *Valle de Bravo*, *Chilesdo* and *Colorines*) to Mexico City, where 20

million people consume 2550 millions of cubic meters of water per year.

At the end of October, the federal authorities and the National Water Commission (*Comisión Nacional del Agua*, CNA), together with the Secretariat of the Interior (*Secretaría de Gobernación*) conceded some demands to the indigenous Mazahuas. (*La Jornada*, October 27, 2004.). However, structural problems remain unresolved.

This example highlights some of the many matters that are at stake when dealing with the human right to water in developing countries. It reveals that the State has a special responsibility to fulfill the right to water facing the increasing development gap between growing megalopolis and rural areas. In addition, industrial pollution and stress over water reserves represent for the country a high environmental and social risk. Despite this, the Mexican legislation does not yet consider strong mechanisms to prevent industries from polluting. Instead, it contemplates a system of fines in case of pollution. Generally, industrials prefer to pay the fine as opposed to installing water plants, as the cost of paying the fine is lower in the short run. In the meantime, the damage caused to the environment and the population is not repaired at the expense of the environment and people's health.

### Unfulfilled obligations

If we analyse the following factors of the right to water (UN General Comment) considered by the UN and compare it with the action taken (or not taken) by the Mexican government we will be able to see clearly how the government has failed to fulfill the above obligations.

*"Availability.* The water supply for each person must be sufficient and continuous for personal and domestic uses." An aspect that shows the failure of the Mexican government in relation to this is the fact that most people have to acquire and install a water tank and a pump, at their own expense, in order to ensure a sufficient and continuous water supply. This is worrying since this option is only attainable for those with the financial resources to afford these costs.

*"Quality.* The water required for each personal or domestic use must be safe, therefore free from micro-organisms,

chemical substances and radiological hazards that constitute a threat to a person's health". This concept implies the State's obligation to control the quality of water for human consumption and control the impact on the environment. However, in Mexico it is not possible to drink water out of the tap without risking contracting serious illnesses.

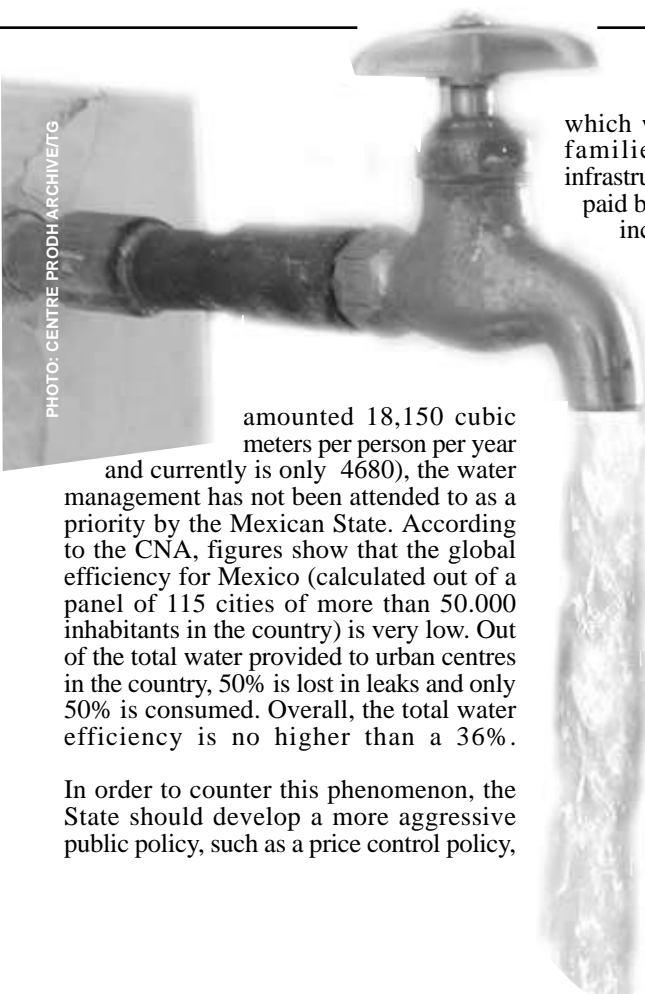
*"Physical accessibility:* water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace..." In relation to this, **1.8 million houses**, 8.6% of the totality, must take their water supply from rivers, wells and other water sources. In accordance with the CNA's figures, **12 million people** do not have access to public water services and there are **23 million** people without access to sewage.

*"Economic accessibility.* Water, and water facilities and services, must be affordable for all". In Mexico, people living in a situation of poverty, where there is no water distribution infrastructure, consume very little water (only **5-7 cubic metres** a month), and pay five to ten times more for it than in urban areas (**3.50 dollars** per cubic metre). This is due to the necessity of getting water transported into their communities by trucks. This is closely related to the factor of non-discrimination. For those sectors of the populations that can afford to pay for bottled water, it is interesting to mention that while a litre of bottled water amounts from between **0.53 USD** to **0.61 USD**, the average price charged by local water systems for a cubic meter of water amounts to just **0.44 USD**. The expensive cost of consuming bottled water explains why people living in poverty cannot afford to consume it. Their option is to consume boiled water or even unboiled water that carries a high risk of contracting serious illnesses. In addition, the difference between prices is more striking if we take into consideration that most private companies that bottle and purify water use the water from the local water system.

### Deficient water management and privileges for private firms

Despite the progressive reduction of water availability in the country (which, in 1950





which would allow higher subsidies for families who do not benefit from infrastructure (rural areas) and higher prices paid by cities residents, according to their income.

amounted 18,150 cubic meters per person per year and currently is only 4680), the water management has not been attended to as a priority by the Mexican State. According to the CNA, figures show that the global efficiency for Mexico (calculated out of a panel of 115 cities of more than 50.000 inhabitants in the country) is very low. Out of the total water provided to urban centres in the country, 50% is lost in leaks and only 50% is consumed. Overall, the total water efficiency is no higher than a 36%.

In order to counter this phenomenon, the State should develop a more aggressive public policy, such as a price control policy,

Indeed, only 60% of the water consumed in the country is being paid for. The Mexican government manages to collect some 1.752.449 USD a year (as rights paid by private and local water administration systems, in exchange for the resource they distribute locally), while the real needs that a reform of the system would imply are much higher. On the opposite scale, private companies (mainly European and North-American) take advantage of the lack of infrastructure, especially through the business of selling potable bottled water and non-alcoholic beverages. Overall, each year 13.406 million USD are spent by the population on the purchase of non-alcoholic drinks.

## Conclusion

In light of the above, it is evident that the situation of the right to water in Mexico is far from being resolved and it probably will be followed by more difficult problems in the near future. The Mexican State needs to revise its national agenda in order to put more attention to issues related to the human right to water. As we have explained, the State, in order to fulfill its international obligations, should take steps in regards to terms of intervention, financial resources, environmental policies and conflict resolution. The progressive realisation of this right is not only an issue of minimum justice, as it is also related to the reduction of poverty and the full enjoyment of the rights to development and to health, amongst others.

## Sources taken from:

CNA, "Situation of the Sub-Sector of Potable Water, Sewage and Sanitation, 2003.



## Continued Short fallings: an Analysis of the Government's Fulfillment on Human Rights Issues During its Fourth Year in Power.

The presentation of the Fourth Annual Government Report by President Vicente Fox to the Nation, on September 1, 2004, was marked by a series of demonstrations of inconformity against his government. Inside the Congress' headquarters, several members of Congress from opposing parties held banners complaining against privatisations of security services; against the process of impeachment of the head of the government of Mexico City (who belongs to the Party of the Democratic Revolution, *Partido de la Revolución Democrática*, PRD) and against the impunity for crimes committed during the dirty war in the 60s and 70s, amongst others. Outside the Congress there were demonstrations by unions and other popular movements, of dimensions that have not been seen for several years, complaining about proposals to reform labour rights affecting the staff of the Mexican Institute

of Social Security (*Instituto Mexicano del Seguro Social, IMSS*), amongst others (*La Jornada*, September 2, 2004).

In this context, it is possible to say, judging from the contents of the President's report on the issue of human rights (under point 3.3.8, p. 345), that the government's concept of the fulfillment of its human rights obligations refers mainly to the recommendations made by the National Human Rights Commission (*Comisión Nacional de Derechos Humanos, CNDH*). In contrast, there is little mention of the recommendations made by the international and regional human rights instruments such as the UN mechanisms and the Inter-American System.

This following is a comparison between some of the actions that have been implemented by the government on the

issue of human rights that were reported in the 4th Annual Government Report and those policies and recommendations included in the *Assessment on the Human Rights Situation in Mexico* issued by the Representative of the Office of the UN High Commissioner on Human Rights (OHCHR) in Mexico last December 2003.

As mentioned in previous articles of *Focus*<sup>1</sup>, in the UN Assessment the OHCHR issued several recommendations to the government in order to improve the human rights situation in Mexico. Many of these recommendations could and should have been implemented by the government immediately after the release of the document. Nevertheless, some have been contradicted by the government's policies and actions; some have been implemented, but not fully; and some have not even been considered by the government.

1. "The Technical Cooperation Agreement is at Risk," *Focus*, Issue 17, Winter 2004.



## Recommendations versus concrete actions

The second general recommendation included in the Assessment encourages the government to promote the adoption of model norms at the local level, that is, according to international human rights instruments. This has not been fully fulfilled. In fact, recently different local governments have emitted new laws that legitimise abuses by the authorities. For example, last August the new Law of Civic Culture for Mexico City entered into force. This law attempts to guarantee the security of the local residents. As explained with more detail in our last issue of *Focus*, this law has serious flaws that violate human rights in different ways. Amongst some of the precepts that seriously affect human rights are: that it establishes that minors from 11 to 17 years old can be held administratively responsible for infringements of the law, which violates the UN Convention on the Rights of the Child. It also establishes 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. In addition, it does not establish explicit guarantees for individuals who are detained as supposed or probable offenders, treating them as if it were a case of an *in fraganti* crime, justifying detentions without a legal warrant. This is a clear violation to the rights of due process contained in the UN International Covenant on Civil and Political Rights and the American Convention. The federal and local government have allowed this law to be implemented, despite the many reports of abuses by members of the police forces on the basis of this law.

The third general recommendation by the OHCHR in the Assessment encourages the government to incorporate in the constitutional proceedings mechanisms to ensure transparency and the participation of the population for the designation of high-ranking public servants, occupying branches of the government or autonomous organisms who are not elected by the public. This recommendation has not been fulfilled in the case of the recent election of the president of the CNDH. As it is explained in detail in the relevant article in this issue of *Focus*, the 1999 Constitutional reform does not allow the participation of the civil society in the selection process of the head of the CNDH. Since the Constitution has not been reformed to take into account what

is stipulated in the recommendation mentioned above, the Senate did not have a legally binding obligation to take into account what civil society presented.

In the case of the murders of women in Ciudad Juárez, the government has only partially fulfilled the main recommendation made by the OHCHR. In the Assessment, it was recommended that the government “publicise periodically the advances of the fulfillment of the recommendations made by national and international organisations, as well as those that may be formulated by the Commissioner”. In this regard, in the first report on the situation of Ciudad Juárez presented by the Attorney General’s Office (*Procuraduría General de la República*, PGR), who is in charge of the investigation, the PGR reported the visit of several representatives of international governmental organisations to Ciudad Juárez. (February 12, 2004). In the PGR’s second report, they accept that it might not be possible to clarify many of the murders because about 100 public servants that were involved in the investigation committed serious anomalies (*La Jornada*, October 26, 2004). The Fourth Annual Government Report itself mentions actions being undertaken to investigate the crimes in Juárez, including the creation of the Special Prosecutor’s Office and of the Commission to Prevent and Eradicate Violence Against Women in Ciudad Juárez, as well as attending to different rapporteurs from the UN and from international human rights organisations in Ciudad Juárez. However, nor the PGR reports nor the Government’s Fourth Report have concretely commented on the steps the government is taking to fully comply with the recommendations issued by the UN Special Rapporteur on Extrajudicial Executions, the IACHR Special Rapporteur on the Rights of Women, the Committee on the Elimination of All Forms of Discrimination Against Women, amongst many others. In the meantime, there have been 15 more women found murdered in Juárez for 2004 (*La Jornada*, October 7, 2004).

On public security (general recommendation No. 13), the OHCHR recommended, among other things, to promote the progressive substitution of the Arm Forces executing civilian functions. Contrary to this recommendation, President Fox reported in his annual government report that the Secretariat of Defence (*Secretaría de Defensa*, SEDENA) renewed a collaboration agreement with the

Secretariat of Public Security (*Secretaría de Seguridad Pública*, SSP). This agreement was the basis to incorporate 5,332 members of the Third Brigade of Military Police into the Support Federal Forces of the Federal Preventive Police (*Policía Federal Preventiva*, PFP) (40. *Presidential Report*, p. 329). In addition, on the November 8, 2004, the Secretary of the SSP announced the naming of military personnel in high-ranking posts within the Secretary (*El Universal*, November 8, 2004).

Regarding the rights of indigenous people, the Assessment recommended to reopen the debate about the Constitutional reform on this issue, in order to clarify the fundamental right for indigenous people, according to the International Labour Organisation’s Convention 169 and the San Andrés Agreements (general recommendation No. 21). This was also a recommendation issued by the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, based on his visit to Mexico last year. So far, Fox’s government has failed to fulfill this recommendation. In fact, in his report, President Fox only refers to the creation of the Sub-commission on Indigenous Rights last April (40. *Presidential Report*, p. 347). On November 9<sup>th</sup>, Stavenhagen again stated that so far, the recommendation to reopen the reform has not been carried out and that the Constitutional reform that had been implemented did not satisfy the demand of indigenous people (*La Jornada*, November 9, 2004).

In conclusion, although this article only includes an analysis of some of the recommendations issued by the OHCHR in its *Assessment on the Human Rights Situation in Mexico* in relation to what President Fox presented in the Annual Government Report, it is possible to say that the current government has not fulfilled its obligations in the area of human rights contained in the international treaties. Likewise, in some instances, the government has implemented some actions to comply with the recommendations made by the OHCHR, but unfortunately, even with these actions, the government falls short. Indeed, in regards to other recommendations in the Assessment and those made by other human rights mechanisms, the government keeps implementing practices that are completely contrary to what has been recommended.

## The Indictment of Juventino Romero Cisneros

On October 14<sup>th</sup>, the fourth District Judge ordered the indictment of the ex member of the Judicial Police (*Policía Judicial*) of the State of Nuevo Leon, Juventino Romero Cisneros, who is accused, along with Miguel Nazar Haro (who was arrested in February 2004), and Luis de la Barreda Moreno (who remains a fugitive from justice), of participating in the forced disappearance in 1975 of Jesús Ibarra Piedra, a member of the Communist League 23 (*Liga Comunista 23*). An arrest warrant had been issued for Romero Cisneros and the others in November of 2003, based on a decision of the Supreme Court stating that the crime of the illegal detention through the kidnapping of Jesús Ibarra Piedra had not passed the statute of limitations. It should be stated that Romero Cisneros remained a fugitive from justice until October 8, 2004.

## A Federal Judge of the United States Grants Political Asylum to a Mexican with HIV/AIDS

This past September, a Federal Judge of Los Angeles granted political asylum to a gay Mexican with HIV/AIDS, arguing that discrimination against this sector of the public occurs in Mexico.

This case was defended by the East Bay Community Law Centre, in Berkeley, California, who requested the participation of the Centre PRODH in the legal proceedings. In this regard, PRODH issued a testimonial declaration in which it described the national human rights situation of people living with HIV/AIDS.

In the testimony, PRODH declared that stigma and discrimination continue to be a constant for this sector of the public and that, in general, they are faced with differential treatment in the varying environments of family, work, education, social and public life.

In this regard, PRODH acknowledges the limits faced by the mechanisms of protection for human rights in the area of prevention, combat, and eradication of discrimination in spite of the approval of the Federal Law for the Prevention and Eradication of Discrimination in June of 2003. This law is limited by significant structural deficiencies that do not permit the completion of the objectives in the practice of the said law, of which we emphasise: that the mentioned law does not integrate the highest international standards of protection of human rights, that the functions of the National Human Rights Commission unnecessarily repeat some functions of the National Council for the Prevention and Eradication of Discrimination (CONAPRED); that attention to violations on the right not to be discriminated against is limited to the use of conciliation ; and that the definition excludes the possibility of a collective discrimination as opposed to discrimination against an individual.

This sentence, combined with other cases of social asylum granted to Mexicans with HIV/AIDS in the United States<sup>1</sup>, show the inefficiency of the Mexican State to generate equitable conditions for the full enjoyment of human rights by all people who live with HIV/AIDS and/or by those who have a different sexual orientation or gender identity than that of heterosexual persons.

## Hearing before the IACHR on Economic Integration and Human Rights

As part of its 121<sup>st</sup> period of ordinary sessions, the IACHR hosted a hearing on October 23, 2004 regarding the impact of economic integration on human rights in the Americas. The hearing, which featured the participation of seven organisations working in the defence of human rights in the region, including the Centre PRODH, marked the first time the IACHR addressed the troubling effects of economic integration on human rights.

Representatives from each of the seven participating organisations expressed their concern about the implementation of trade agreements involving investments, services, privatisation and the deregulation of diverse sectors of the economy that affect the capacity of governments to abide by their human rights obligations. The primary objective of the hearing was to establish a dialogue with the IACHR and, in so doing, encourage the IACHR to convince Member States of the Organisation of American States that all trade agreements should respect their human rights obligations.

## Third Anniversary of the Death of Digna Ochoa

October 19, 2004, marked three years since the death of the human rights defender and former collaborator of the Centre PRODH, Digna Ochoa. In July 2003, when the Special Prosecutors Office made known its conclusion regarding its investigation into the death of Digna Ochoa stating that she had taken her own life, the Centre PRODH rejected the conclusion as we considered that it was not based on solid and conclusive evidence. To date, the government of the Federal District has yet to comply with its commitment to clarify the events in which Digna Ochoa lost her life.

1. For additional information, please consult the article "United States Grants Social Asylum to Four Mexicans Living with HIV/AIDS," in the Fall 2001 edition of *Focus*.



## Glossary

**CNA**, *Comisión Nacional del Agua*, National Water Commission. Government body, part of the Executive Branch in charge of fomenting and regulating the management and use of water and sewage systems.

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

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

**IACHR**, Inter-American Commission on Human Rights.

**IMSS**, *Instituto Mexicano del Seguro Social*, Mexican Institute of Social Security. Governmental body in charge of providing health and pension services to wage-earners.

**NHRI**, *National Human Rights Institution*, academic term to define the concept of *Ombudsman* (see below) and the office that it runs.

**OHCHR**, Office of the UN High Commissioner for Human Rights.

**Ombudsman**, an individual appointed to receive, investigate, report on and (in some instances) resolve complaints against institutions.

**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.

**PROFEPA**, *Procuraduría Federal de Protección al Ambiente*, Federal Environmental Protection Agency.

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 public policy; and three work areas: international relations, communication and organisational development. PRODH has consultative status with the United Nations Economic and Social Council and it also has the status of Accredited Organisation with the Organisation of American States..

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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