

FOCUS



Centro de Derechos Humanos
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Human Rights in Mexico

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After the notorious acts of 2006 involving the excessive use of force by police and paramilitary forces in the state of Oaxaca, the problems have not ceased. Not only have the deaths, torture and arbitrary detentions of 2006 not been brought to justice, but also in July 2006 there was another violent conflict between security forces and the social movements supporting the teachers' struggle.

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Human Rights: the balance of a worrying policy

A year in, the government of Felipe Calderón continues to display its commitment to a governmental strategy based on the consolidation of public security with a strong backing from the military. In this context both marginalized groups and their needs, as well as the absence of a clear human rights policy, are points which Centre Prodh finds very concerning.

Although towards external observers, Mexico has maintained an active presence in human rights matters, inside the country these issues are virtually invisible. This can be seen in numerous examples such as the dissolution of the commission created to resolve the femicide against women in Ciudad Juárez, in the state of Chihuahua, as well as the absence of mechanisms to continue with the work of the recently dissolved *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).

In relation to the Legislative Power we hold out hope that these matters will be incorporated at some stage, ideally in concrete ways through the reform of the criminal justice system that is currently being drafted. However fiscal and electoral reforms, also necessary, have occupied much

of the legislative activity in the middle of this year.

In regards to the Judicial Power, principles have now been approved in order to proceed through investigatory commissions on areas related to human rights violations. That these cases must go to the Supreme Court demonstrates clearly the incompetence of the Mexican political system to guarantee rights through the departments and other government bodies that currently exist.

Unfortunately, recent data on the attitude of Mexican society is extremely concerning. The newspaper *El Universal* published a survey on September 3 according to which many citizens stated they would be willing to allow incursions on their rights in the name of security. Between 50 and 60% would agree to permitting taps on telephone conversations and detaining persons without judicial warrants. Even more worrying was that 39% think that torture is a justifiable means of obtaining information.

In light of this context it is vital to continue insisting on the implementation of effective mechanisms to strengthen human rights and encourage the society to participate actively in the consolidation of a democratic, just and equal Mexico.

The San Xavier Mine: Economic Integration and the Violation of Human Rights

The problem of free trade and economic integration

Processes of global economic integration have provoked notable contradictions in countries. The North American Free Trade Agreement (NAFTA) required Mexico to make legislative changes to facilitate the privatisation of land and the entrance of

foreign corporations. Among these changes is worth mentioning that of Article 27 of the Constitution in order permit the sale of community *ejido* landholdings to private entities. Also modified in 1992 were the Mineral Law and the Law of Foreign Investment to allow foreign investors to have 100% participation in exploration and production activities.

These changes, apparently intended to spur economic development, present serious obstacles for Mexico in complying with its national and international human rights obligations. The contradictions to which we refer are evident in the case of the San Xavier Mine – subsidiary company of the Canadian Metallica Resources Inc – situated in Cerro de San Pedro (Mount San Pedro) in the state of San Luis Potosí. Municipal, state and federal authorities have infringed existing environmental legislation, which has put the enjoyment of the social, economic, cultural and environmental rights of the local population at risk.

The San Xavier Mine: quick profits at the cost of human rights

The activity of the San Xavier Mine in the municipality of Cerro de San Pedro, 22km from the state's capital San Luis Potosí, commenced in 1995 after conducting studies to evaluate the mineral concentration and measure the feasibility of carrying out projects for the extraction of gold and silver.

The company utilises the open cut mining method, a process which consists in the removal of large amounts of soil and subsoil which are later processed for the extraction of minerals which are present in very low concentrations.

In line with the Environmental Impact Statement (EIS) presented by the Canadian firm, 25 tonnes of explosives would be used daily to dislodge 80 thousand tonnes of the hillside which are then grounded and sifted, after which 40 per cent of that material is deposited in patios de lixiviation (previously treated with clay to reduce the infiltration of cyanide into the soil),

where it is treated daily with a mix of 16 tonnes of cyanide, diluted sodium and 32 million litres of water, in order to achieve the separation and precipitation of contained metals. The process is prohibited in many countries for its huge destructive and contaminating power. However in Mexico the authorities appear to be open to accept a method of operation for high economic gains, low costs and in the shortest time possible. At the end of the process, designed to last for 8 years, a crater with diameter of one kilometre and 250 metres depth will be left; in the same time lapse a mound of 77 million tonnes of material saturated in cyanide will be created. In the other community close by, Palma de La Cruz, 120 million tonnes of material with large sulphur content will remain after the operation.

San Xavier Mine outlined in the EIS that its Project would cause atmospheric contamination due to the mineral extraction. To this is added the effects of the daily evaporation of 8 million litres of a mixture of water and cyanide. It needs to be remembered that this excessive use of water takes place within an arid region with scarce amounts of water. The hectares utilised by the project are left worthless for any sort of productive activity, given that the effect on the land is so severe, irreversible and permanent.

Besides the severe environmental impact, the project affects the cultural heritage of the region. Mount San Pedro is the symbol on the official coat of arms of the State of San Luis Potosí. Owing to the mineral richness of the region, in this site the Royal Mount Mine was founded in 1592, although due to a lack of available water the population moved to the current city of San Luis Potosí. Approximately 400 of the historical buildings in Mount San Pedro are protected by the National Institute of Anthropology and History (INAH). The movements caused by the explosions have visibly affected the buildings.

Through the process of authorisation for the operation of the San Xavier Mine, the authorities of different levels of government have failed to ensure

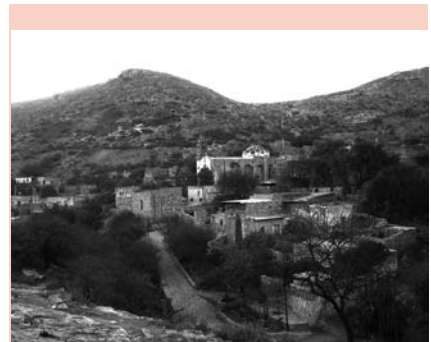


Photo: Mount San Pedro: rich cultural and environmental heritage is at risk due to the San Xavier Mine. Archive CENTRE PRODH/JR.

that applicable legislation is respected and that judicial resolutions are followed. Not complying with stipulated requirements under this legislation has affected the rights of people in surrounding areas. These rights are guaranteed by the Protocol of San Salvador and the International Covenant on Economic, Social and Cultural Rights (ICESC) - these instruments establish the responsibility of the State to guarantee the rights to health, a clean environment and the benefits of culture.

Centre Prodh is also concerned about this case due to the right to access to information and public participation which are seriously undermined by these projects that provide no consultation mechanism for the people affected. The Mineral Law does not include provisions on public hearings. In situations such as this one it is vital to ensure access to information necessary so that people and communities can make adequate decisions about issues that concern them, as well as being able to make public their opinions or complaints against the violation of their basic human rights. As outlined by principle 10 in the Rio Declaration of 1992: "the best way of dealing with environmental questions is with the participation of all interested citizens, at the levels to which they correspond".

International rejection of open cut mining

The extraction method of open cut mining gravely affects the health of the population, and for this reason it has

been banned in a number of countries. In the European Union there are important negative declarations on the extraction of gold with cyanide, such as the Declaration of Berlin. In the United States, the state of Montana has prohibited the process. In reply to the cyanide spill which occurred in Baia Mare in Romania, Brussels emitted the Directive 2006/21/EC about the management of residual substances in the extraction industry. Equally, after accidents which have occurred in many regions of the world, movements have emerged in opposition to the opening of new mines: Rosia Montana in Romania, Lake Cowal in Australia and Pascua Lama in Chile, among others.

Civil resistance to San Xavier Mine

In the case of the San Xavier Mine, the affected population has mobilised itself through various civil organisations, among them the Broad Opposition Front and Pro San Luis Ecological Groups, who have tried to

impede the project through the presentation of legal arguments that have been resolved in their favour. During the course of this long fight the activists have denounced many acts of repression, among them the detention of activist Pedro Reboloso in the centre of the city of San Luis Potosí and also the detention of five students during a march which took place on 1 May.

This situation is not an isolated case in Mexico currently, nor in the world. The effects of Canadian mining corporations and their relation with human rights violations has been documented, not only in regions that lack adequate regulations in this area, but also in Canadian territory, where the corporations have displaced indigenous communities. In Mexico there has been an exponential growth in migration owing to the changes that have permitted the privatisation of land. Since the entry into force of NAFTA, 15 million Mexicans have abandoned their lands. Before this context the mine is presented as an

opportunity for rural development, however its beneficial effects in this respect are limited. Corporations receive a lot of assistance to install themselves and on exiting projects they leave behind communities abandoned, as well as an enormous amount of toxic residue. The environmental consequences and the long terms costs are never considered.

Conclusions

Centre Prodh insists on the necessity that the Mexican State establishes adequate mechanisms to monitor the processes of economic integration in order to maintain respect human of rights. In the same way it is necessary to promote legislation that permits communities to access information related to projects which put their health, environmental and cultural rights at risk. This is the only method by which citizen participation and the voices of those affected will be heard.

Impunity and Oversight in Oaxaca

After the continuing impunity surrounding the violent acts that occurred in 2006 in the state of Oaxaca, (see *Focus Issue 27*), the situation has not improved into the second half of 2007. The continuing presence of Ulises Ruiz Ortiz as the state governor and notorious oppressor behind the violations, as well as the failures of the federal government to take action to sanction those responsible has meant that Oaxaca remains in an unstable situation. During July 2007, social demands were still not being met and key leaders of the Popular Assembly of the Peoples of Oaxaca (APPO) were still in prison – most notably Cesar Mateos, (APPO spokesperson) Flavio Soca, Horacio Sosa, (brothers and leaders of APPO) and David Venegas (21 year old student and member of APPO). These political prisoners



Photo: Altar of remembrance to Bradley in the Plaza de Santo Domingo in Oaxaca / Archive CENTRE PRODH / TG.

represent just one part of a conflict that erupted on the 16 July on the eve of the annual cultural celebrations of the *Guelaguetza*. Before considering these events however, it is worth examining some of the most prominent cases from 2006 in order to demonstrate the state of impunity that still exists.

2006 Clashes in the state of Oaxaca

In May 2006, the teachers movement installed a tent encampment in the Historic Centre of the city of Oaxaca in order to demand better working conditions. However, on 14 June, the governor Ulises Ruiz Ortiz ordered the state police to evict the protestors. The operation was carried out with a considerable amount of violence but without any success, due to the support of the locals, workers, street vendors, farmers, students, women, men, old people and children who united with the teachers to reclaim the central plaza and reinstall the encampment. From this point on, the resignation of Ulises Ruiz was added to the demands of the teachers. Given the negligence of the governor and the lawlessness in Oaxaca, the APPO appealed to the federal Senate. Despite recognising the lack of the rule of law in Oaxaca, the senators decided not to intervene, in this way favouring Ulises Ruiz. The violent eviction attempt in the state capital and its outlying urban areas were the prelude to a police-military incursion on the part of the

Federal Preventative Police (PFP) between 27 October and 3 November 2006, which resulted in 106 arbitrary detentions and the deaths of over 20 people (see *Focus Issue 27*).

Death of Bradley Roland Will, Indymedia cameraman

One of the most violent days that occurred in the state of Oaxaca since the APPO began its protests demanding the exit of the governor Ulises Ruiz took place on 27 October 2006. In simultaneous actions the police units of the state, with the backing of the Revolutionary Institutional Party (PRI) attacked the barricades installed by the APPO. During the attacks, New York cameraman Bradley Roland Will, professor Emilio Alonso Fabián (killed in Santa María Coyotepec) and landowner Esteban Ruiz were all killed. As well as this, there were 23 people wounded by firearms. Santa María Coyotepec, situated ten kilometers from the capital, was one of the zones where the violence was the strongest. Bradley Roland Will, cameraman for the Agency Indymedia, was found in the middle of the street recording the events when he received two gunshots – one in his side and one in his stomach. He was immediately attended to by his press colleagues, members of APPO and for first aid workers, who tried to get him to the Red Cross in the capital, however he died on the way to the hospital.

presumed responsible for the death of Bradley Roland Will. However, owing to the fact that the State Attorney General did not review the facts, these suspects remained in liberty without charges. Later on the same day the Attorney General attempted to incriminate the APPO sympathisers. For another part, the National Commission on Human Rights (CNDH) requested the Federal Attorney General (PGR) in November to take on the investigations of the case of Bradley Roland Will and outlined that the state authorities had denied him access to a preliminary investigation.

In March 2007 the State Attorney General remitted the investigation to the Federal Attorney General. Up until the time of writing there is no knowledge of any advances in the investigation, despite the case being highly publicised including its appearance in a petition by Reporters Without Borders before the Inter-American Commission on Human Rights in Washington in July 2007.

16 July 2007: The violence is repeated

In July of 2007, only a matter of days before the celebration of the annual cultural event of the *Guelaguetza* (organised by the Oaxaca Department of Tourism), teachers and APPO supporters had showed their intention to carry out a “popular Guelaguetza”, organised by the grassroots supporters outside of the official event. On 16 July a group of demonstrators made their way to the Auditorium where the official event would be held. At 11:30am the demonstrators arrived at the Guelaguetza Auditorium where they requested to enter the area to stage their own celebration. The police units stationed in the area, among them the State Preventative Police, the Industrial Banking Assistance Police and the Municipal Police of Oaxaca, all impeded their entry and in order to disperse the demonstrators launched tear gas and stones, provoking a reaction from the demonstrators. The cartridges of tear gas were thrown directly at the people at the front of

Current state of the investigations

According to the photographic registers obtained on site by *El Universal* newspaper, the director of Public Security of Santa Lucia del Camino, Avel (sic) Santiago Zárate appears, the boss of the PRI municipal staff Manuel Aguilar and also the municipal policeman Juan Carlos Soriano Velasco appears – alias *El Chapulin*. Witnesses also recognise Pedro Carmona, ex president of the neighbourhood of Felipe Carrillo Puerto, in Santa Lucia. Subsequently, the mentioned officials, Abel Santiago Zarate and Orlando Manuel Aguilar, were detained as being



Photo: Highway in Santa María Coyotepec where witnesses referred to the existence of snipers in the violent acts of 2006
/ Archive CENTRE PRODH/

the march, which put the lives of the participants at risks, as documented by Centre Prodh in its urgent action released jointly with other NGOs. In this action we specifically expressed concern for the life of two supporters of the APPO, who were hospitalised with fear for their vital organs. The situation of one of these members, Emeterio Cruz, was so grave that he went into a state of coma.

The clash between demonstrators and police units lasted approximately three hours. Demonstrators, as well as other people who were travelling in public transport or were found at their work sites, were all hit and transferred to detention centres, without any justification. Different sources reported approximately 60 people wounded (15 of those police and the rest civilians

and protestors). Added to this, between 40 and 50 arbitrary detentions were carried out. Many of these detainees were forced to pay extortionate amounts of money to be released.

Conclusions

The acts of 16 July, just as the standstill in the investigations on Bradley Hill, are situations that demonstrate that after more than a year the Oaxaca conflict is not being solved and, far from having given replies to the social demands that gave rise to the conflict, the authorities are doing their best to deny the gravity of the events.

Amnesty International documented in its report of 31 July 2007 the grave violations of human rights that occurred during the crisis: among those

the excessive use of force, arbitrary detentions, torture and ill treatment, harassment towards human rights defenders and journalists, as well as violations of due process and the right to a fair trial.

There is a grave human rights crisis in Oaxaca, as clearly shown by the events of 2006 as much as 2007. However even more worrying is that until the present time the federal and state governments have not proposed any methods to guarantee and effectively respect human rights. Before this situation, Centre Prodh sees that a completely impartial investigation is needed to clarify the violations of human rights that occurred and guarantee that those responsible will be submitted to legal proceedings.

Protectors of forests under persecution in the State of Mexico

Climate of aggression against activists in the "Great Water Forest"

Since 1998, Ildefonso Zamora, along with his family and other companions, has worked to bring public attention to the problem of illegal logging in the community of San Juan Atzingo which is situated near the ecological reserve



Photo: Ildefonso Zamora (father of Aldo Zamora) in a press conference at Centre Prodh / Archive CENTRE PRODH/ TG.

Zempoala Lagoons National Park in the State of Mexico. The park is located within what Greenpeace has called 'the great water forest' which houses two percent of the world's biodiversity and supplies three quarters of the water consumed in Mexico City, besides helping to mitigate climate change and its impacts in the region. Ildefonso has lead work on ecotourism, reforestation projects and data collection. He also presented a formal accusation against illegal logging in the area, in December of 2005 before the Attorney General's Office for the Protection of the Environment (*Procuraduría Federal de Protección al Medio Ambiente*, PROFEPA).

However the important work of these environmentalists is in danger due to the actions of gangs of illegal loggers who engage in violent and threatening acts against the activists. The most shocking aggression against the environmentalists happened in the evening of May 15, 2007 when Aldo and Misael Zamora, sons of Ildefonso,

21 and 16 years old, respectively, were victims of an attack that resulted in the death of Aldo and the serious injury of Misael. Aldo and Misael Zamora were ambushed by four gunmen in Santa Lucia, Ocuilán, State of Mexico, while travelling with three other family members (who were unharmed). The two sons were forced out of their vehicle on a highway pass and shot at with high calibre firearms.

It is important to remember that these incidents occur within an environment of harassment and systematic discrediting of defenders of environmental rights in Mexico. The murder of Aldo Zamora can be placed among the similar cases of Rodolfo Montiel and Teodoro Cabrera (both cases carried out by Centre Prodh), Felipe Arreaga, the cases of the indigenous Tarahumara environmentalists Isidro Baldenegro and Hermenegildo Rivas in the state of Chihuahua. All of these activists have been named as Prisoners of Conscience by Amnesty International

and have received a series of Environmental prizes as an acknowledgement for their work.

Criminal investigation of the killing of Aldo Zamora

At the state level, the members of the Zamora family presented their accusation to the local Prosecutor's Office immediately after the attacks. However despite the fact that the four attackers were fully identified by Misael, there was a significant delay in the initial criminal investigation. According to the information received, the State of Mexico's Attorney General's Office took approximately

four alleged attackers before the judicial authority, who issued the arrest warrants the same day.

On August 2, 2007, two of the attackers, Fernando and Silvestre Jacinto Medina, were finally detained under these arrest warrants. However there are still two more arrest warrants that remain outstanding – those for Luis and Alejo Encarnación. These two attackers remain at large and we fear that because of this the members of the Zamora family are still at risk of being harmed by persons close to the attackers.

At the federal level, as a result of the outcry generated by the attacks, the Federal Attorney General attracted the

the Special Investigation Unit for Crimes against the Environment. No significant developments have yet emerged from this unit.

Current situation

The authority's response to the general outcry about the illegal logging and the publicity that the attack has received, has been to initiate the implementation of police and military operations in the ecological zone of Zempoala Lagoons National Park, with a large deployment of agents. However these operatives have only produced temporary results, only noticeable during the periods of implementation. Additionally, according to information received, local inhabitants that cut wood for domestic use have been detained during the police operations while the actual illegal loggers have not been caught. Most worrying is that these actions may be a source of possible arbitrary detentions.

Recent acts of intimidation and governmental response

Between May 26 and 27 of this year, following the death of Aldo, a shooting occurred in the community in the evening as residents prayed for Aldo. Also a shooting took place at the municipality building, where an ambulance and a patrol were stationed outside the building and were shot at by unknown persons using a rifle from their moving car. The municipal mayor, Felix Alberto Linares González declared publicly that the attack came from the criminal gangs in the region. He also complained that the previous week a group of illegal loggers arrived at the mayor's office and on not finding him, they left him a message with his secretary that said *'tell the mayor if he doesn't keep it down he is going to be fucked'*.

Worried for the prevailing impunity as well as the security and integrity of the Zamora family and those that have reported illegal logging, Greenpeace Mexico and Centre Prodh accompanied



Photo: Members of Greenpeace and Centre Prodh in joint discussion with Ildefonso Zamora / Archive CENTRE PROD H/TG.

24 hours to go to the site of the attack and waited 3 days before searching for the individuals accused of the attack. It was not until May 24 when the state Attorney General's Office announced that it would remand the

investigation to the federal jurisdiction and initiated a preliminary investigation on May 17, for the crimes of murder, injury and logging of forest resources in the Zempoala Lagoons National Park. These charges were assigned to

the Zamora family in a variety of meetings with the authorities of the State of Mexico. On June 4, 2007, we had a meeting with the State Secretary of the Interior and the Commissioner of the State Security Agency. After our meeting these two public servants ordered unilaterally, without consulting the Zamora family, to install two police agents with a police patrol outside the Zamora family home. However, there is no clarity on any of the modalities of such protection measures or their duration.

The following day after the meeting regional newspaper sources close to the government published that according to information provided by the State Secretary of the Interior himself, Mr Zamora had a criminal record. This action clearly constitutes a campaign to discredit Mr. Zamora's work and demonstrates an ambiguous attitude by the representatives of the State government in relation to the concerns laid out during the meeting carried out the day before. It is notable that the supposed criminal record, merely a single appearance before a judicial authority, resulted in Mr Zamora being acquitted of the accusations that had been put against him. In virtue of these facts, the Zamora family is sceptical

towards the supposed goodwill of the local authorities.

So far the actions taken unilaterally by the government in order to guarantee the safety of Ildefonso and his family and to stop illegal logging activities have been insufficient. The presence of a police patrol outside the Zamora home has not prevented that acts of intimidation that are carried out against the Zamora family.

These actions are not the only ones against the activists, who have received a number of threats from illegal loggers, especially escalating in 2005 and 2006 with a series of confrontations on deserted highways and also at their family residence.

Petition of precautionary measures before the Inter-American Commission of Human Rights

As a result of the governmental inefficiency, on June 14 Centre Prodh and Greenpeace-Mexico on behalf of Ildefonso Zamora and others requested precautionary measures from the Inter American Commission of Human Rights, to secure the life and physical integrity of the victims of the acts of intimidation and their family, in dialogue and consultation with the

victims, in order that the Commission recommend that the four arrest warrants of the State Attorney General from May 24 are executed and that information is given about any advances in the investigation into the murder of Aldo Zamora.

Conclusions

Nearly four months after the murder of Aldo Zamora and the serious acts of intimidation against Ildefonso Zamora and his family, the state authorities have not fulfilled their duty to ensure justice. The authorities have also failed to guarantee the physical and mental security and integrity of other traditional and official local authorities that have supported Ildefonso Zamora's environmental work in his community. Centre Prodh has formally taken on the integral defense of the Zamora family, which includes their legal representation, media and lobbying efforts and links with international organisations. The case is a paradigmatic example of the ineffective action of authorities in investigating violations against activists. The work of Ildefonso Zamora and his companions is critically important for one of Mexico's most vital forest areas, and the defense of their legitimate demands is most urgent.

Media in Mexico: The difficult path to building democracy

Background on media regulation in Mexico

The media is able to contribute to the consolidation of democracy in order to make information on government activities available to citizens. In Mexico, however, the regulation of the media has allowed the media to neglect its social responsibility.

In 1960, during the government of López Mateos, the definition of radio and television was changed: it was conceived as an activity of public interest and not of public service, which meant that the State lost the

right to fix quotas on the prices for the service. As such, concessionaries acquired the legal power to select to whom they would and would not make their service available.

In 1968 it was settled that concessionaries would give 12.5% of their daily transmission time to the availability of the State, taking care to not put the economic stability of the company at risk. However, this payment was never put to use.

In the government of José López Portillo (1977–1982), an attempt was made to elevate the right to information to the constitutional level as part of

the freedom of expression of the press and of opinion. The plan of the government was intended to widen article 6 of the Constitution on freedom of expression, however the only thing that was achieved was to reform the party system to allow opposition political parties more space in the media. The regulation of the right to information was left hanging.

During the first government of an alternate party lead by Vicente Fox, the Law of Access to Public Information and Government Transparency was approved (11 July 2002) and the Federal Institute of

Access to Public Governmental Information (IFAI) was created, responsible for monitoring this right. In April 2002 the Executive signed a declaration to regulate the Federal Radio and Television Law in the area of concessions, permissions and content of transmissions. With this the payment in kind to the state with transmission time was reduced from 12.5% to 1.25%, that is to say 18 minutes daily of airtime.

Notorious Media Laws passed in 2006

With this decision, many working groups and law proposals were silenced that since 1977 had been discussing the necessity of legislation to regulate the media. In November 2005, the House of Representatives approved, without prior legislative debate, a bill for the Radio and Television Law which was created to favour concessionaries. The initiative was



Protester against the approval of the Televisa Law
Archive CENTRE PRODH/ GG.

sent to the Federal Senate and was passed on March 20, 2006. The approval of the law (known as the Ley Televisa -Televisa Law – owing to the large gains that one of the largest national channels won through the law) occurred during the federal presidential campaign, which facilitated the obedience of the political parties to the interests of powerful concessionaries.

Supreme Court Action

After its approval, 47 senators presented a constitutional challenge before the National Supreme Court. In June 2007 the Court resolved the unconstitutionality of the Federal Radio and Television and the Federal Telecommunications Law.

The Supreme Court justices appealed to the social function of the media and recognised that the laws made significantly weakened the State's control over the radio-electronic spectrum. They outlined that the Laws encouraged monopolistic practices, affecting public communication media, community and indigenous radio stations and evading the process of public tenders set down in the Constitution, among other comments.

Deficiencies of the Law:

Article 28 of the Federal Radio and Television Law privileges those that already possess a concession by giving them additional services of telecommunication such as internet and cellular phones without obliging them to submit a public tender nor pay any corresponding fee. With this new concessionaries that were interested in providing this service were excluded, resulting in the concentration of services in few hands. This article was singled out as violating the caretaker responsibility of the State in the areas of the economy and access to information, by allowing monopolistic practices and putting the guarantee of equality at risk.

In respect to permissions given, the Federal Telecommunications Commission, (Cofetel, organism responsible for carrying out official processes in this area) had the discretionary faculty to solicit additional information on the applicants from government entities such as the State Department and the Secretary of Defense. In these cases it was left open to involve military investigations in the regulation of media.

The composition of the Federal Radio and Television law, in its article 20 leaves the determination of extralegal requirements open to the will and discretion of the authorities. The law does not establish the terms and form in which the authority should answer the applications made, which results in a discriminatory system that does not guarantee the principles of equality before the law and the protection of the legal system, placing the public guarantees in a state of grave vulnerability before the administrative authorities.

In summary, the Federal Radio and Television Law contravenes a number of international standards in the area of human rights, as much from the Inter American Commission on Human Rights and the Inter American Court on Human Rights on the freedom of expression (Principle 12 of the Declaration of Principles on the Freedom of Expression; Chapter VII of the special report *Justice and Social Inclusion: The Challenges of Democracy in Guatemala* 2003). These outline standards on media concessions and permits and the existence of community and social radio in the country, among others. The federal law does not outline economic nor legal mechanisms to guarantee the existence and subsistence of these radio stations, but rather restricts their operation and functioning and excludes the possibility that these smaller permit holders could offer additional services in telecommunications.

Social groups that work in the media have stressed the total absence of regulation, promotion and support for public media outlets, as the approved law only sought to strengthen and concentrate the power of current radio and television concessionaries. They have also highlighted the absence of judicial certainty by which both types of media outlets are defined, as they are not subject to clear criteria that allow their development, growth and economic sustainability.

Conclusion

The sentence of the Court, however, opened a window of opportunity for Senators to begin draft work in September on a new Federal Radio and Television Law that will include the observations formulated by the Supreme Court.

Besides the recommendations of the Court it is also necessary to focus on

the limits and clear functioning of Cofetel, so as to guarantee its autonomy, not least by renewing its members.

It is also necessary to guarantee the equality of the tenders for the use of the radioelectric spectrum. Legislation to allow for a true plurality of the media still remains hanging and it is vital that the State secures the freedom of expression and competition. For

another part, the discretions of the Executive must be limited. The Law on State Reform, currently in its drafting stages, should take on the reform of media laws from a democratic perspective, with a view to strengthen the mechanisms of transparency and equity in the granting of concessions and permits in order to allow favourable diversity in the democratic life of the country.

UN torture monitoring in the hands of the National Commission on Human Rights: a wasted opportunity

On 11 July 2007, the Mexican Department of Foreign Affairs announced that the National Commission on Human Rights (CNDH) would officially take on the responsibility of carrying out the National Prevention Mechanism (NPM) as required under the United Nations Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT). The decision is concerning as it gives the CNDH, a body that has been repeatedly discredited, the responsibility of carrying out a series of regular visits to sites of detention and reporting findings to the United Nations. Mexico's signing of OPCAT in 2003 and its ratification on 11 April 2006 were received as welcome developments in the implementation of human rights in this country that were hoped would ensure greater protection against torture. However, the status of the CNDH does not give much scope for it being a worthwhile mechanism.

OPCAT is considered as one of the most advanced international human rights instruments of its kind, and comes within a recent international climate of scrutiny towards the practice of torture. It was adopted by the UN General Assembly in December 2002 and came into force on 22 June 2006.

It currently has 58 signatories; 34 of these being State Parties. Article 1 establishes that "The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment". The protocol establishes the Subcommittee on Prevention, which is mandated with conducting regular visits to State Parties' detention facilities. The Subcommittee works in partnership with the NPMs of each state party, which are also charged with carrying out a system of regular visits to places of detention. The optional protocol does not specify the form that the National Prevention Mechanism must take, (e.g. one national body or a network of mechanisms; governmental or non-governmental) but rather emphasises the required characteristics of independence and effectiveness that the organism must have.

The Department of Foreign Affairs officially notified the Secretary General of the United Nations, Ban Ki Moon, and the United Nations High Commissioner on Human Rights, Louise Arbour, of the appointment of the prevention mechanism. The selection of the CNDH, although



José Luis Soberanes, President of the National Commission on Human Rights, now a notorious public figure. Archive CENTRE PRODH.

technically complying with Mexico's obligation to name its NPM within a year of ratifying OPCAT, in many other aspects goes against the purpose and requisites for the body. The decision by the Department of Foreign Affairs totally ignored the process of consultation it undertook with civil organisations between 2005 and 2007 and jointly arranged with the Office of the High Commissioner for Human Rights in Mexico City and the Association for the Protection Against Torture. This two-year process of consultation seminars had led to the understanding that the NPM would combine national (federal and state) human rights institutions and civil society in a mixed body. Despite this, the final decision came down to an agreement between different executive branches of government (The State Department, Department of Foreign Affairs, Department of Defense,

Maritime Affairs, Public Security, Attorney General and Health Department), agreeing on the CNDH as the sole body responsible for carrying out the mechanism. The Association for the Prevention of Torture recommends that the NPM should be established by legislation or ideally in the constitution of the State Party –this is hardly the process by which the NPM was decided on in Mexico (Association for the Prevention of Torture, Establishment and Designation of National Preventive Mechanisms, Geneva 2006: www.apr.ch). This executive agreement initiated by the Department of Foreign Affairs leaves open the possibility that the NPM's mandate can be altered by further executive action, without having to answer to the legislative power.

The CNDH: a discredited body

Under the agreement, the CNDH will use its “Tercera Visitaduría General” (Third General Visitation Team) to organise the structure and functioning of the NPM. This unit is a team of about 30 experts, lawyers, medical personnel, pathologists, psychologists and social workers. However, the problem remains that it is far from independent and effective to the level required by the optional protocol. The CNDH was established in 1990 and has been marked by very few worthwhile actions in these years, despite the large amount of funding it receives. Members of congress recently called for the resignation of the CNDH's president, Jose Luis Soberanes, whose image as the national human rights ombudsman has been considerably tarnished, especially in recent episodes such as his very strong public stance against the recent decriminalisation of abortion in Mexico City.

One such scandal against the CNDH is that of Ernestina Ascensio, a 73 year-old indigenous Nahua who was allegedly raped on 25 February 2007 by soldiers stationed in the indigenous community of Tetlalzinga, Soledad Atzompa municipality, Veracruz. After being transferred to a local hospital, Ernestina died the following day. Initially, the state Attorney General affirmed that Ernestina's first medical

report revealed that she had a fractured cranium and ribs, lesions throughout her body, and lacerations around the rectum and vagina and therefore that she had possibly died as a consequence of a rape attack (Proceso No. 1584, 11 March 2007). The National Defence Secretary (SEDENA) initially issued a press release where it announced that it was investigating the alleged involvement of soldiers in Ernestina's death but minutes after issuing this press release, the SEDENA issued another press release where it stated that Ernestina had been possibly attacked by criminals dressed in military clothing. Disregarding the evidence of rape found in the initial autopsy, President Felipe Calderón publicly stated that Ernestina had died of chronic gastritis. Calderón based this affirmation on the results of a second autopsy, carried out by the National Commission on Human Rights (CNDH) and the SEDENA that had not been publicised yet. Days after, the CNDH declared that the cause of death was chronic anaemia. The case attracted considerable public criticism in the face of such glaring irregularities. It also demonstrated how tightly linked the positions of the CNDH and the president were – something worrying for a body which is apparently an independent, autonomous government organism. After continued outcry in the following months, the CNDH released their recommendation 34/2007 on 3 September, which maintained that Ernestina had died from anaemia and blamed all the fault of the authorities on the State Attorney General of Veracruz and the Secretary of Defence.

Further problems with the prevention mechanism in Mexico are related to structural and procedural issues. The new structure sees the NPM subject to the organisational prerogatives of the CNDH, a body with a large mandate and many functions beyond those of monitoring torture. This undermines the autonomy of the NPM to choose its own budget and direction. Also, the Association for the Prevention of Torture mentions that there are considerable risks involved in using pre-existing national human rights bodies to carry out the NPM. One of these risks is that the national human rights body's quasi-judicial role within the legal system may jeopardise the cooperation between government

officials and the NPM if officials feel their involvement will subject them to prosecution (APT, Establishment and Designation of National Preventive Mechanisms, Geneva 2006: www.apr.ch). Article 21 of OPCAT specifically outlines that information gathered by the NPM must be kept strictly confidential and that no informant should be sanctioned for giving information.

The response from the CNDH itself claimed that its selection for the role was a “recognition of the work the CNDH has done over the last 17 years and its experience in conducting site visits” (CGCP/092/07 press release CNDH 15 July 2007 www.cndh.org.mx). It is true that the CNDH has conducted many visits to sites of detention, however it is worth mentioning that the work of the NPM requires a different structure and methodology than any visits hereto executed by the CNDH. For example, the visits of the CNDH to sites of detention in San Salvador Atenco in May 2006 (see *Focus Issue 27*, Dec 2006) produced results and statistics, but failed to go beyond this to meaningfully examine the responsibility of authorities in the violations with a view of worthwhile recommendations on the case. Similarly, the CNDH's primary recommendations on the human rights violations in Oaxaca in October/November 2006 did not even acknowledge the documented human rights violations nor recommend actions required (See *Focus Issue 27*, Dec 2006).

Conclusions:

Centre Prodh joins a number of Mexican human rights organisations in condemning this unilateral decision to appoint the National Commission on Human Rights as responsible for carrying out the National Prevention Mechanism. Given the CNDH's track record on human rights monitoring, we believe this decision of the Foreign Affairs Department goes against the spirit of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, which aims to use independent national mechanisms to carry out effective site visits to detention sites.

News Briefs

Centre Prodh's Proposal for the Law for the Prevention, Sanction and Eradication of Forced Disappearances of Persons in the State of Michoacán

Historically, the practice of forced disappearance has been common in Latin America, and Mexico has been no exception. Civil organizations such as the Mexican Association on Political Detentions and Disappearances (AFADEM) calculate that in the period at the end of the 1970s and the beginning of the 1980s close to 1,200 people – almost all of them political activists in opposition to the government – were disappeared, with their location and those responsible for the acts still remaining unaccounted for. The National Commission on Human Rights (CNDH) has documented at least 532 cases of people presumably disappeared during this so-called “dirty war”, as well as the now extinct 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 (FEMOSSP), which determined that at least 643 cases had sufficient elements to be recognized or strongly presumed as the above crime.

Since 2002, the “Miguel Agustín Pro Juárez” Human Rights Centre and the Diego Lucero Foundation have assumed the legal representation and joint support for the Guzmán Cruz family, involving 5 cases of forced disappearance between 1974 and 1976. As part of this project of integral defense, new legislation was proposed with the aim of criminalising forced disappearance in all its complexity, recognizing that this practice has not been eradicated within the State but rather has been adapted to the realities of the contemporary context.

On 24 August, 2006, the State Governor pushed forward the proposed legislation by presenting it before the Local Congress’s Justice Commission. Centre Prodh is currently articulating to the members of this Justice Commission to consider the proposal so that it can be passed by the end of this present legislative period. We have called on international support in our petitions to the congress of Michoacán, as well as focusing heavily on local media strategies. This proposal comes within an interesting and urgent context in the lead up to state elections in Michoacán on 11 November.

Two important human rights visits in Mexico: The President of the IACHR and AI’s Secretary General

During early August 2007, human rights featured strongly in the national media in Mexico due to two high level visits. The first one was of the Secretary General of Amnesty International Irene Khan, whose visit was accompanied by the Mexico team from the Amnesty headquarters in London. Centre Prodh was highly involved in supporting this visit, which involved high-level meetings with President Felipe Calderón, the Supreme Court and the Attorney General, as well as trips to the states of Oaxaca and Guerrero. Centre Prodh hosted informal meetings with a variety of civil society organisations and Amnesty International representatives in our office premises. We also participated in an important victims’ forum with Irene Khan, in which 3 of representatives of our cases were present: Alicia de los Ríos, daughter of Alicia de los Ríos Medina (disappeared after her detention in 1978), Carolina Moreno, daughter-in-law of migrants’ human rights defender Concepción Moreno and representatives of victims in San Salvador Atenco.

Irene Khan’s public statements on human rights in Mexico emphasised the “schizophrenic” approach to human rights in this country – apparently complying with standards at the international level, while inside the country a climate of impunity continues to exist.

Centre Prodh attended a meeting in early August with Florentín Menéndez, President of the Inter-American Commission on Human Rights and country representative for Mexico. We also facilitated his visit to the prison of Santiaguito, where Barbara Italia, one of the women we are defending from San Salvador Atenco, is being detained.

The Supreme Court’s role in human rights investigatory commissions

During recent months the National Supreme Court (SCJN) has occupied a relevant role in human rights by having decided to carry out the investigative power vested under article 97 of the Constitution that allows the Court to look into issues related to the violation of individual guarantees. This investigative faculty has fallen on cases that have been extremely prominent in the public sphere: the police violations in San Salvador Atenco, in the State of Mexico, the detention of the journalist Lydia Cacho and her transfer to the state of Puebla and the conflict between the Popular Assembly of Oaxaca (APPO) and the state governor Ulises Ruiz (see *Focus* Issue 28 for further antecedents on the investigatory commission).

The decisions of the Court have been controversial. In some cases it has appeared to be tightly linked with the Executive Power, while in other cases it has emphasised its independence in its proceedings. However, the creation of commissions respecting the three above cases does appear to indicate democratic advances. Also, the Court’s declaration of unconstitutionality with respect to the controversial Federal Television and Radio law must also be highlighted as a welcome development.

Even though the Court cannot emit recommendations nor give judgments in respect of what it investigates, its participation in the investigation of cases of grave human rights violations is still relevant given the discredit that it lends to the officials responsible for securing these rights.

Conclusions

It is worrying that it is necessary to resort to the Court to resolve issues that correspond to other government bodies. However, given the circumstances we consider it essential that the SCJN is involved as somewhat of a monitoring body with respects to human rights.

The mystery that is Plan Mexico

In the series of actions designed to combat organised crime, the governments of Mexico and the United States are negotiating a joint strategy about which the officials involved have not released details. The newspapers of The Dallas Morning Herald and The Los Angeles Times both published in May that assistance would be provided to Mexico in order to strengthen telecommunications and the capacity to monitor airspace.

During the North American Leaders Forum (in Canada, August 20 and 21), George W Bush declared that this partnership was not like Plan Colombia, and that United States soldiers would not be sent to Mexican territory. However, the negotiations considered the exchange of intelligence, obtainment of radar equipment and training from Washington on the technology and its use.

The negotiation of the agreement implies difficulties for both nations. For Mexico’s part, there has always existed strong opposition to the occupation of territory and the necessity to control operations has always been emphasised. The United States, for its part, wants to maintain control, besides the fact that Congress must approve the plan which is difficult owing to the different opinions of members of congress.

Although still no concrete details have been revealed, a number of proposed reforms by Calderon to permit the investigation of telephone conversation and emails, as well as control orders and detentions without the need of judicial approval, all appear to confirm what has already been mentioned in the press.

Conclusions

It is necessary to adopt common strategies to combat the dangers of organised crime through effective strategies, however in the current situation there are many doubts that have arisen from the existing negotiations. It must also be emphasised that the fight against organised crime can only be effective if it guarantees the absolute respect of civil liberties and human rights.

Glossary

PFP: (Federal Preventative Police) The federal police force created under Ernesto Zedillo's administration (1994-2000). The PFP includes federal police, soldiers and marines. It is responsible for preventing crimes and maintaining public order and has become the primary security force in charge of implementing operations against drug trafficking.

Ejido: Lands retaken by the government and then granted to communities for joint use. Ejidos were a common practice in pre-hispanic times which disappeared during Spanish colonial rule, only to be again re-established as a land system after the revolution of 1917 and finally granted under the presidency of Lázaro Cárdenas in 1934.

PRI: *Partido Revolucionario Institucional*, Revolutionary Institutional Party, which held power for 71 years until defeated in the July 2000 elections; the period of its rule is known as the *priista* government. The PRI currently holds power in a number of state governments, including Oaxaca.

Televisa: The largest and oldest television and radio company in Mexico (since 1955). Also the largest Spanish language media corporation in the world. It owns free-to-air television channels, pay TV, internet, radio stations and music record enterprises.

Guelaguetza: Annual cultural celebration involving traditional dances and music in the streets of Oaxaca and the Guelaguetza Auditorium. The event is organised by the State Tourism Department and sponsored by large corporations. In 2006 the event was cancelled due to the existing conflict.

Centre Prodh was created in 1988 as an institution dedicated to the promotion and defence of human rights. It has four areas of work: legal defence, education, communication and analysis and international relations. Centre 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.

Centre 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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