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Centro de Derechos Humanos
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Human Rights in Mexico

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Bulletin, Issue 30, December 2007

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Criminal Justice Reform: A Difficult Balancing Act

Actors from all points on the political spectrum believe that Mexico needs urgently to reform its written, inquisitorial criminal justice system. Consensus on how to reform the system, however is far from being achieved as the Mexican Government's conception of reform is very distinct from that of human rights civil society organizations and of international human rights standards.

Civil society is concerned that recent proposals from the executive branch will undermine individual guarantees and serve to strengthen already unchecked and at times abused State powers in the fight against organized crime.

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The struggle for labor rights continues in the marginalized region of Tehuacán, Puebla, home to many of the international clothing industry's worst violators of human rights. Since 2003 to the present workers suffer repression at the hands of their employers. The labor issues have remained so dramatic that the community has barely had time to defend itself against large scale contamination of the water supply.

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Center Prodh continues to participate in the defense, documentation and observation of the case of San Salvador Atenco – events that involved considerable sexual violence against women on May 3rd and 4th, 2006 in the State of Mexico. This case exemplifies a disturbing trend of State use of sexual violence as a form of torture in Mexico.

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Without Human Rights, there is no Human Security: The Merida Initiative

The Mérida Initiative, also known as Plan Mexico, represents the continuation of many years of fear-based international policy by the United States of North America (US) aimed at achieving domestic security through the use of military and law enforcement action in and aid to foreign countries, in this case, Mexico.

From the Mexican side, rather than looking to root causes and offering long-term solutions to problems such as cross-border crime and illegal migration, the issues that Plan Mexico purports to address, the Mérida Initiative signals a continued, if not intensified, focus by the Mexican Government on achieving domestic public security through heavy-handed imposition by military and police forces on the lives of civilians. This approach to public policy in both countries relegates human rights to a politically correct afterthought rather than the guiding principle that it should be as a matter of law and ethics.

At time of print, the initiative proposes a one-time "emergency funding" aid package from the US to Mexico of \$500,000,000 USD, which, according to senior officials in the US Senate, would likely seek future annual renewal and is bundled with funding for the war in Iraq. The line items in

the appropriations, however, do not address root causes of the problems that the initiative proposes to correct. The aid package consists largely of military, communications, and intelligence equipment, along with funds to train Mexicans to utilize these technical resources. Though such aid may not have a catastrophic direct impact on the well-being of the average Mexican, neither will it address effectively the underlying sources of problems such as cross-border crime. For example, law-enforcement operations will do nothing to alleviate poverty or natural resource degradation, just two of the many root causes of Mexico's extremely powerful black markets and forced illegal migration.

The facts relevant to this discussion are not crime statistics, but rather that the minimum wage in Mexico is just over \$4 USD per day, without universal health care, and many people do not earn even that much. By contrast, according to the Mexican Department of the Exterior, on average a Mexican working in the US, regardless of the legality of his or her immigration status, is able to support 3 to 5 Mexicans living in Mexico. In light of this reality, increasing military intelligence on the borders is not going to change the

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Defenders of Migrants' Human Rights

Under Threat in Mexico

Current Situation

The increasingly contentious political climate surrounding migration in the Americas has converted human rights defenders who fight for the basic rights of migrants traveling through Mexico into targets for intimidation and aggression by Mexican State officials. Such human rights defenders have recently faced physical attacks, imprisonment, and other attempts by Mexican law enforcement agencies to discredit and stigmatize both them and the population whom they defend.

Mexico is infamous as the most dangerous country to cross en route to the US due to widespread, systematic violence by local police and private security agents on the trains acting with the complicity of state officials. Some individuals in Mexican communities located along common migration routes have therefore made it their work to denounce human rights violations by state agents, as well as to provide humanitarian aid, such as a warm meal, to migrants who arrive in their communities without food, water, or a place to sleep. These human rights defenders are well-known in their communities and, through their work and their efforts to promote a culture of tolerance and respect for the rights of all individuals regardless of migratory status, they have prompted other community members to volunteer their time and aid as well. By stepping forward to defend migrants' human rights, however, these defenders have themselves become targets of violations by Mexican authorities.

Doña Conchi: imprisoned for helping people in need

One such example is Concepción Moreno, known as Doña Conchi, a human rights defender from the state of Querétaro who, despite being a woman of extremely limited economic resources, provides food and shelter to migrants who pass through her town on their route from Central America. These migrants travel on the tops of the freight trains that pass through Querétaro and often arrive in Doña Conchi's neighborhood hungry, injured, and having survived robbery and extortion by police and state officials. For the simple act of giving food and providing humanitarian assistance to these migrants, Doña Conchi was sentenced to 6 years in prison, convicted of participating in human smuggling.

On March 9, 2005 at approximately 7:00 pm, Doña Conchi was preparing

to share some food with a group of six migrants when four agents of the Federal Agency of Investigation (*Agencia Federal de Investigación* - AFI) arrived at her house. Cocking their guns, the agents beat the migrants and forced Doña Conchi and several members of her family to their knees while they searched their home. The agents ultimately arrested Doña Conchi without a warrant because she was "feeding a group of foreigners."

Following her arrest, she was placed in detention and tried before the Fourth District Court in the city of Querétaro for the federal crime of "harboring persons of irregular stay in the country with ends in human smuggling." The prosecutor alleged that Doña Conchi was the accomplice of a recently-arrested *pollero* (someone who earns a profit by transporting undocumented migrants).

Doña Conchi's trial was plagued with irregularities. The legal aid lawyer initially assigned to her case did not speak with her. The *pollero* with whom she was accused of collaborating denied knowing her and the primary witness who had declared against her retracted his statement three times, explaining that he had only implicated her because he had been threatened by state agents. The transcripts of other statements against her show a series of irregular

features; for instance, two of them are identical in wording and spelling and others contain inexplicable gaps in information. Unable to read or write, however, Concepción was at the mercy of this flawed legal process.

In April 2007, Doña Conchi's case was brought to the attention of Center Prodh, where it was immediately brought into the integral defense project, shedding light on the illegal proceedings in her case. The case received national and international media attention, including prime time national news reports in Mexico. Through our efforts the national Senate of Mexico also passed a resolution to revisit her case, eventually leading to a new judicial review.

Liberation from Prison for Doña Conchi

In response to an *amparo* (habeas corpus) action by Centro Prodh, on 31 August 2007, the First Collegiate Court of the Twenty-Second Circuit rescinded Doña Conchi's sentence, finding that she had not been given a fair trial. After 2 years of her prison sentence and five months of collaboration with Center Prodh, the liberation of Doña Conchi finally became a reality. She is now back with her family and community and continues her work helping migrants. She is also working with Center Prodh to educate her community



Photo: Press conference celebrating the release of Concepción Moreno Arteaga from prison/Archive CENTER PRODH.



Photo: Concepción Moreno Arteaga / Archive CENTER PRODH.

on migrants' rights and connect with others like herself who provide basic assistance to migrants in Mexico.

While this has been a joyful triumph for Doña Conchi, the reality remains that for defenders of migrants' rights there are systematic threats and violations that go unpunished.

Father Alejandro Solalinde and Father Heyman Vázquez Medina: targeted for having sheltered migrants

In related cases, two priests in Southern Mexico have been subjected to intimidation by authorities for their actions in defense of migrants. Father Alejandro Solalinde runs a shelter in Ixtepec, Oaxaca and Father Heyman Vázquez runs a shelter for migrants in Arriaga, Chiapas. Both are outspoken members of their communities and have denounced multiple abuses by police and other authorities against migrants.

In January 2007, Father Solalinde was beaten and detained while attempting

to defend a group of migrants against violence by local municipal police in Ixtepec. The incident, though reported, remains uninvestigated by Mexican authorities.

Father Heyman Vázquez has been subjected to a climate of hostility on the part of authorities, recently receiving visits by Federal Agents to his shelter, accusing him of being a *pollero*, with no backing for these accusations other than an alleged anonymous email. Local human rights organizations (including the Fray Matías de Cordova Human Rights Center and the Fray Julián Garcés Human Rights and Local Development Center, both in Chiapas), who are familiar with the climate of hostility against human rights defenders and the tactics used by law enforcement personnel to intimidate them, believe that the above incident fits within the framework of intimidation toward defenders of migrants' rights in Mexico.

Mexican migration standards: harsh on migrants and those that protect them

By projecting the message that it is a crime to defend migrants or provide humanitarian aid in the form of a sandwich or a blanket with no remuneration, Mexican authorities reinforce the discourse of the criminalization and dehumanization of undocumented migrants, who based on discrimination are falsely perceived as not being entitled to human rights.

It is important to note the use of accusations of human smuggling, a for-profit business, as a pretext to detain or harass defenders who receive no financial or other gain from providing humanitarian aid. In this regard, Mexico's vague legal framework around the subject of smuggling, exemplified by article 138, paragraph 2 of the General Law of the Population (criminalizing "harboring

persons of irregular stay in the country with ends in smuggling"), gives local authorities wide discretion in interpreting any contact with migrants as a crime. Center Prodh is concerned that this broad legal provision will continue to be used as a tool to repress and discourage human rights work in the communities who have contact with migrants.

International Standards on Human Rights Defenders

The shortcomings of Mexican law are unacceptable when contrasted with international standards, such as the United Nations *Declaration on Human Rights Defenders*, which outlines the right to defend human rights freely without fear of retaliation. It also outlines the rights to study human rights, impart pro-human rights views, educate others about human rights, and promote human rights. Article 12 of the Declaration specifically provides the right to protection by the State against retaliation for one's activities as a human rights defender.

Conclusions

Providing humanitarian assistance, promoting tolerance, and denouncing human rights abuses by authorities are all well established activities under international law. In Mexico, however, when help is given to migrants, those who offer support unfortunately become the target of surveillance, hostility, and aggressions on the part of authorities. It is important to note that defenders of migrants' rights across the border in the United States have also been targeted by corresponding authorities for their work. Center Prodh is very concerned by this pattern of targeting those who defend the human rights of migrants, which puts both the defense of human rights and the already perilous situation of migrant safety at further risk.

Criminal Justice Reform: *A Difficult Balancing Act*

Background

On October 12th, 2007, lawyers from Lawyers for Justice and Human Rights, Center Prodh and the National Network of Human Rights Organizations “All Rights for All”, presented in a thematic hearing before the Inter-American Commission on Human Rights (IACHR) during its 130th period of sessions. The hearing was aimed at informing the Commission about the process of constitutional reform in the area of criminal justice in Mexico, emphasizing the implicit risks in the reform package that was presented in March 2007 by current Government lead by Felipe Calderón.

Referring to such a reform, the Office of the United Nations High Commissioner on Human Rights in its Diagnosis on the Situation of Mexico recommended in 2003, states the need for “promoting a profound transformation in the justice system that guarantees the Rule of Law in all processes” (OACNUDH, Diagnosis on the Situation of Mexico, 2003, General Recommendation 11).

These comments have been echoed by Center Prodh as well as by other national and international organizations such as Amnesty International.

There currently exists a general consensus about the urgent need to

out organized crime has been evident in both the Fox and the Calderón administrations. Within the package of criminal law reform proposals by the Fox administration in 2004, organized crime was deliberately singled out as being exempt from any proposed reforms due to the “great risk” to national security that it raises. As for Calderón, in addition to his criminal justice reform proposal of March, in May 2007 he presented 20 actions to establish a state policy on security which supports the severe sanctions for organized crime.

Felipe Calderón’s Reform Proposals

The criminal justice reform proposed by Felipe Calderón and presented to the Federal Senate on March 9th, 2007 aims at amending nine articles of the Mexican Constitution, with the effect of assigning the State more faculties to pursue organized crime at the cost of the rights of all citizens.

Amongst other worrying measures, the initiative proposes the following:

- Constitutionally recognize the Mexican figure of “arraigo”, which permits detention without charges of a suspect for 30 days, or 60 in the case of organized crime, while an investigation is carried out to determine if there is sufficient evidence to press charges and proceed with the case. This practice has been established both internationally and by the Mexican Supreme Court in 2005 as illegal arbitrary detention.
- Give powers to the police to break into domestic residences without judicial orders or search warrants in the case of “flagrant” crimes.
- In the case of organized crime, provide the Public Prosecutor with powers to order arraigns, search



Photo: Carmen Herrera (left), Lawyers for Justice and Human Rights, Santiago Aguirre (center) and Luis Arriaga, Director (right) of Center Prodh presenting at the hearing on Criminal Justice the Inter-American Commission on Human Rights/ ["http://www.oas.org/Photos/2007/10Oct/52/pages/_A000017.htm"](http://www.oas.org/Photos/2007/10Oct/52/pages/_A000017.htm).

The Mexican criminal justice system is a written, inquisitorial system, which often produces systematic violations of the right to due process, discriminates against those charged with a crime, and offers little or no protection to victims. Prominent among its shortcomings is the absence of the presumption of innocence.

Differing perspectives on the need for reforms

The necessity for integral reform of the criminal justice system in Mexico has been raised on multiple occasions.

reform the national judicial framework and its institutional practices with the aim of transforming the criminal justice system. However, this consensus does not reflect an agreement on the contents of those reforms. There are many opposing views ranging from those that call for a reform centered on the rights of the accused and victims, to those who promote a reform based on “better tools” of the State to combat organized crime.

The reforms proposed by Calderón’s administration take the latter point of view. Indeed, the tendency to single

warrants and telephone monitoring without prior judicial approval.

- Establish a database on people reported as being linked with organized crime.
- To establish an exception to the right of the individual to request that a criminal sentence be carried out close to their place of residence in cases of organized crime.
- To preserve practices that are outside of international standards of due process, as seen in the investigation stages of criminal proceedings in Mexico.

As an organization for the defense and promotion of human rights, Center Prodh believes the reforms proposed by the Executive are firmly positioned against the rights of due process as outlined in the American Convention on Human Rights. This is particularly clear in the case of arraigo. This practice has been considered a violation of liberty and a form of arbitrary detention by the Group on Arbitrary Detentions of the United Nations, yet Calderón proposes giving it constitutional status.

Although it currently appears that Calderón's reform package will not be approved as is, his vision of reforms is in agreement with other parties in the Senate with the aim of proposing a similar legislative perspective on criminal justice. A proposal from any of these actors would uphold the most concerning parts of the president's original reform package. Against this backdrop of uncertainty in which public debate on the subject has been notably absent, Mexican human rights organizations consider it vital to voice our concerns before the Inter-American Commission on Human Rights, presenting an analytical document that was also delivered to the head of the Executive branch and the politicians involved in the discussion of criminal justice reform.

Thematic Hearing before the IACHR

In the thematic hearing that took place on October 12th, 2007, in Washington D.C., we examined our concerns with the reforms and put forward those aspects of the process that strongly undermine human rights. The

Commissioners of the IACHR showed great interest and concern at our comments, especially regarding the principle of the presumption of innocence and the rights that should protect a person accused of a crime. They also committed to soliciting information from the Mexican State on the process of reforms on criminal justice.

Conclusion

With the involvement of the IACHR, human rights organizations in Mexico hope to continue actions at a national level to avoid the implementation of reforms that could limit the guarantees of due process and support the institutionalization of arbitrary detention in Mexico. The need for reform in the short term is urgent. In order to guarantee human rights, however, such reform must incorporate international standards of due process and human rights, and cannot be limited to the State's desire to prosecute organized crime.

Human Rights Violations

Continue Unabated in Tehuacán, Puebla

Background

In previous editions of FOCUS, we have reported with concern on the situation in Tehuacán, Puebla, just an hour from Mexico City. Tehuacán is a municipality characterized by multinational corporate investment, violations of labor rights, destruction of the environment, and harassment of human rights defenders. The labor exploitation and environmental degradation in Tehuacán exemplify the negative impacts of multinational businesses on local communities that provide their labor.

Since the 1990s Tehuacán has been one of the principal headquarters of the clothing industry in Mexico, with over 700 textile factories (*maquilas*) opening in the region. Brands such as Levi's, Wrangler, Guess, Calvin Klein, Lee and Tommy Hilfiger, among others, have benefited from the experienced Tehuacán workforce.

The establishment of the *maquilas* in Tehuacán, has brought profits to investors at the cost of increasingly precarious working conditions for employees, as well as environmental degradation endured by surrounding



communities. In response to the deterioration of workers' basic labor rights, civil society organizations have emerged to confront the situation, including the Human and Labor Rights Commission of Tehuacán Valley (*Comisión de Derechos Humanos y Laborales del Valle de Tehuacán*, CDHLVT), which has worked to defend the labor rights of Tehuacán's workforce since 1995.

Continuing Repression of Workers

During the last decade, there have been numerous confrontations between clothing factories and their workers. Unjustified dismissals have been common, with the most serious incident being the firing of 163 workers in December of 2005. During this period one of the most hostile reactions consisted in the violent physical attack and subsequent arrest of CDHLVT member Martín Barrios, who was placed in a state prison for 15 days without judicial approval or sufficient evidence to charge him. After his imprisonment under baseless accusations, Martín was released from prison on January 12th, 2006. The speed and peculiar form of his liberation, a unilateral pardon, support the suspicion that the proceedings against him were politically motivated and tied to the interests of *maquila* employers with the complicity of local authorities.

Since that time, CDHLVT has continued its defense of workers' rights in Tehuacán and has closely supported the workers' process of organization to protect themselves against abuses by their employers (for more information, see - the site of the Maquila Solidarity Network). In addition, CDHLVT has begun denouncing the pollution caused by the *maquilas*, which dump their residual liquids directly into the area's irrigation canals that run to local farms. The use of washing processes for denim in the factories spills out large amounts of toxins into the water. This is a serious problem as the region relies so heavily on its local water supply and many zones on the outskirts of the town still do not have potable water.

The local water authority of the municipality of Tehuacán has never released the figures on the amount of water that the *maquilas* in the area use. Although federal authorities such as the National Water Commission (*Comisión Nacional del Agua* – CAN) are aware of the excessive water use by the clothing industry in this area, they have done nothing to sanction or regulate its use. In contrast, local farmers are heavily restricted in their use of public water supplies.

Recent developments in the struggle for labor and environmental rights

In early 2007, a number of unjustifiable dismissals were documented in a Vaqueros Navarra factory owned by Navarra Group, one of the largest and most powerful textile corporations in Tehuacán. At the time of the firings, Navarra officials implied that the workers' efforts to organize had caused the corporation financial losses that threatened to force the closure of several factories.

In May 2007, when factory workers requested their share of the profits, as due to them under Mexican law, they were instead offered a paltry amount equivalent to two days' salary. Upon

seeking the aid of their union, however, the workers learned that they had been incorporated involuntarily into a union known for defending the interests of employers and for colluding illicitly with the PRI (*Partido Revolucionario Institucional*), the political party currently in power in the state of Puebla.

Assisted by CDHLVT, 750 workers proceeded to form a coalition and undertook diverse actions to denounce the violation of their rights. The employers lost no time in retaliating. Following a workers' march in June 2007, thirteen of the coalition's leaders were fired without just cause.

Ultimately, the workers of Tehuacán decided in July 2007 to join the National Union of Workers in the Sewing, Dressmaking, Clothing, and Similar and Related Industries "19th of September," an independent union with a long history of social activism affiliated with the *Authentic Workers' Front*. The request to transfer the right of collective bargaining to this union was presented on July 10th, 2007. At the same time, the workers of Tehuacán, assisted by CDHLVT and the Maquila Solidarity Network, have petitioned the brands whose clothing they manufacture to intervene with the Navarra Group and demand respect for the workers' rights. Brands including Gap, Levi's, American Eagle, The Limited, Calvin Klein, Abercrombie & Fitch, and Tommy Hilfiger have been asked to verify the working conditions that prevail in the factories where their clothes are made.

Despite such efforts, the harassment of workers who seek effective representation by an independent and democratic trade union has not ceased. The unjustified dismissals continue, with the factories continuously pressuring workers to sign letters of resignation, threatening to close the factory if the workers do not comply. In October 2007, more than fifty workers were fired without cause.



That same month, American Eagle Outfitters, Gap Inc., and Warnaco Inc. published a letter sent to the Navarra Group in which they expressed their concerns following their verification of the allegations regarding the Tehuacán workers' rights. Their findings followed an audit by the monitoring organization Verité. In addition to documenting unjustified terminations, this audit brought to light numerous other abuses including: physical, psychological, sexual, and verbal harassment and attacks; threats of being fired for organizing within unions, for refusing to work overtime, and for association with labor rights NGOs; retention of wages, severance payments, and other benefits owed to fired workers who refused to sign letters of resignation; and discriminatory practices in hiring and firing based on pregnancy status, age, and trade union affiliation.

In their letter, the clothing brands also requested the management of Navarra Group to respect the workers' right to freedom of association and freedom from interference in electing trade union representatives.

As of November 2007, the number of dismissals without cause has risen to 100 and harassment of workers is ongoing. The workers and community around these *maquilas* have been kept so busy fighting for basic labor rights, that there is little energy left to fight

for an end to the severe environmental degradation caused by the substandard practices used by *maquilas*. The environmental degradation therefore continues unchecked as neither the state nor federal government is fulfilling their obligation to ensure that the practices of multi-national corporations meet basic environmental standards and do not adversely affect the health or the future of the surrounding communities.

Recent victory with union vote:

This hostile climate makes the recent victory by Vaquero Navarra Workers to vote in The "19th September" Union the title holder for their collective contract even more significant. On 23 November workers stood in front of the bosses of the company and the state-backed unions to make individual and public votes for the union of their choice. The vote resulted in a large majority for the "19th September" Union. This is a great victory that many would not have hoped for if it had not been for the work of many members of the solidarity movement.

Conclusion

This situation in Tehuacán underscores the need for greater accountability of multinational companies both at the local and international level, particularly in light of the free trade agreements adopted by an increasing

number of countries in the region which make these business partnerships possible. In this regard, there is an ever clearer need for the structural framework of foreign investment to include safeguards for the human, labor, and environmental rights of local populations.

At the same time, the reality is that local accountability mechanisms and multinational business interests currently do not place emphasis on ensuring that foreign investment is implemented in a way that protects and ensures human rights. Therefore, when existing international mechanisms fail to ensure basic labor rights, international NGOs, intergovernmental organizations, and governments should let Mexican authorities know that they must end harassment of workers and human rights defenders and allow them to continue their activities free from the threat of attack, arbitrary detention, unjustified dismissals, and other abuses that have characterized the struggle in Tehuacán, Puebla thus far. Even though the workers have achieved a recent victory of voting for union representation, this does not guarantee the vote will be respected by the bosses. Center Prodh believes it is vital to continue monitoring the situation closely due to the likelihood of further harassment or repression, and in the hopes of addressing the environmental devastation that is ongoing.

Sexual Violence Against Women: Systematic Violations

of Human Rights During the Police Intervention in San Salvador Atenco, Mexico State

Background

Center Prodh continues to be involved in the case of San Salvador Atenco, which stands out as one of the most brutal acts of the excessive use of force by state officials in Mexico's recent history. In this article, we briefly re-

visit the facts of the events that occurred on 3 and 4 May, 2006, in order to offer a deeper analysis of the issue of sexual aggression in light of international law and recent developments in the case of the victims this Center is defending.

Facts

The Front for the People's Defense of the Land - FPDT (from the Spanish *El Frente de Pueblos en Defensa de la Tierra*) is a social organization made up of members from 16 communities in Texcoco and San Salvador Atenco

in the State of Mexico, in the central region of the country. In 2001, the FPDT gained international attention when it succeeded in protecting its members' lands against expropriation by the federal government for a new International Airport for Mexico City.

After years of activism, the FPDT has become a social leader in the region, supported by the people and recognized by the State government. Within this framework, on May 3rd, 2006, the FPDT lent its support to a group of flower vendors who sought – despite a recent ban against them by municipal authorities – to set up flower stands in their traditional places outside the “Belisario Domínguez” market in Texcoco. There was a strong police presence in the area, leading to a confrontation between the flower vendors and the police. The confrontation eventually triggered a police operation coordinated by the Security Agency of the State of Mexico (*Agencia de Seguridad del Estado de México*) and the Federal Preventive Police (*PFP - Policía Federal Preventiva*). This police operation came within a wider context of State repression of social demonstrations in the last two years and exemplifies a trend of excessive use of force by Mexican security agencies.

Within the context of this operation, police committed numerous human rights violations against the 211 individuals they detained and against the general population of the community San Salvador Atenco. The sexualized abuses committed against many of the 47 female detainees are of particularly grave concern, considering the wanton and deliberate nature of these acts and the fact that until recently, cases such as this had not been seen since the period known as Mexico's Dirty War in the 1960s and 1970s.

Many of the detained women, apart from suffering various injuries from

the excessive force used to detain them, were subjected to physical, psychological, and sexual violence consisting of threats of death and of rape; denigrating sexist remarks; groping of their genitals, breasts, and buttocks; pinching and biting of their breasts; vaginal, oral, and anal rape using fingers and other objects; and in some cases several of these combined. These violations occurred inside the vehicles in which the detainees were transferred over the course of four hours to the “Santiaguito” penitentiary in Almoloya de Juárez, Mexico State.

Sexual Violence under International Law

Under international law, numerous cases affirm that rape, committed against detainees and in certain circumstances, constitutes torture when the following elements are present:

- a. **Pronounced physical or mental suffering.** In addition to suffering violence during the rape itself, the victims are injured or in some cases become pregnant as a result of the attack. Apart from the fact of being raped, the victims suffer psychological trauma that may be lasting, in addition to the social stigma carried by this type of abuse. In this regard, the Istanbul Protocol (*United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*) has been of great use in measuring post-traumatic stress experienced by the victims from Atenco.
- b. **Intention to punish, intimidate, obtain a confession, discriminate, or achieve any other end.** In the case under discussion, the sexual aggressions were committed with the intention of retaliating against the victims for the events of 3 May 2006, in which several police were injured.
- c. **The perpetrator is a public**

servant at the time of the acts. As previously mentioned, the perpetrators in this case were agents of the Federal Preventive Police and the Security Agency of Mexico State.

Added to the above, sexual abuses committed in the context of internal conflicts constitute a recognized form of gender discrimination aimed at humiliating an adversary. As noted by the Special Rapporteur on Violence Against Women, “It is a message of castration and emasculation of the enemy group. It is a battle among men fought over the bodies of women.” (See UN Doc. E/CN.4/1998/54, para. 12)

Actions undertaken

This case is significant in demonstrating a pattern of state-sanctioned sexual violence against women as a systematic tool of oppression. Facing what was already sure to be a challenge for the Mexican judicial system, especially given the recently created and largely ineffective Special Prosecutor for Crimes Related to Violence Against Women (*Fiscalía Especial para la Atención de Delitos Relacionados con Actos de Violencia en Contra de las Mujeres*, Fevim) of the Attorney General's Office, the victimized women of Atenco, in coordination with Center Prodh, decided to engage two mechanisms of human rights protection within the United Nations universal human rights system, as well as present the case before the regional Inter-American Commission on Human Rights.

In the UN system, these mechanisms include the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Committee Against Torture (CAT). Both committees were presented with a shadow report produced by Center Prodh and the

World Organization Against Torture entitled “State-Sanctioned Violence Against Women Detained in Mexico: The Case of San Salvador Atenco.”

In response, as part of its concluding recommendations to the government of Mexico, CEDAW asked the State to ensure that the Special Prosecutor (Fevim) assume jurisdiction over the crimes committed in San Salvador Atenco to guarantee that the perpetrators are tried and punished.

The Committee Against Torture also recommended to the Mexican government that it, “*Establish transparent criteria to make it possible to determine clearly, in the event of jurisdictional disputes between judicial authorities, cases where the Special Prosecutor responsible for handling offences involving acts of violence against women can exercise jurisdiction in respect of specific offences against women.*” The CAT recommendations called for specific responses from the Mexican government within one year, or by November 2007. This is a strong display of disapproval from the CAT and the fact that the Mexican State has not yet complied with the above request, adding to the situation of impunity surrounding the events.

Center Prodh is submitting a petition before the Inter American Commission on Human Rights which will be submitted at the end of 2007, in the hopes of the case being admitted for further review by the Commission.

In addition, the National Supreme Court of Mexico has been looking into the events of San Salvador Atenco by using their investigative power vested in Article 97 of the Constitution. The Court will not be able to give judgments in relation to what it investigates, yet this is an important opportunity to shed light on the issues at hand. For this reason, in September

2007 Center Prodh was part of a joint project with two other organizations Insyde Ideas and CIDE Social Sciences to submit an *amicus curiae* legal document to assist the Court in its examination of the events, specifically with a view to offering guidelines and standards on the legitimate use of force by police and state officials. The results of the Court’s consideration are still pending.

Response of the Mexican authorities

The current state of the investigation into the acts of torture committed against women during the San Salvador Atenco police operation leaves these crimes in impunity at both the state and federal levels. The State Attorney General has only prosecuted one police officer. He was recognized by a victim as having forced her to perform oral sex on him in the bus that transferred her to the penitentiary. However, since the Criminal Code does not consider oral sex to be a form of rape, the charge against the perpetrator was “libidinous acts,” or “an act of sexual eroticism not intended to lead to intercourse.” Given the character of this charge as a non-serious offense, the perpetrator faced minimal consequences with a term of only six months to two years in prison, which could also be commuted to a fine.

As for the federal level, the Special Prosecutor’s investigation continues to demonstrate delays in its proceedings and in gathering expert testimony. To this day the Special Prosecutor has yet to issue a decision regarding its competence to investigate acts committed by the Mexican state police. In fact, the Special Prosecutor’s office has not charged anyone for these crimes, although nineteen months have passed since the events.

Conclusions

The case of the sexual abuse against women in Atenco is emblematic of a systematized use of sexual violence as a form of torture, as well as the lack of mechanisms to guarantee victimized women swift and impartial access to justice in Mexico. Systematic sexual violence against women in the custody of Mexican officials is a problem that must not go unchecked. Thus far the Mexican government has done little to implement international recommendations to stem such practices. We ask the international community to pressure the Mexican Government to act quickly to implement international recommendations, to impart justice to these victims in particular, and to eliminate this problem systematically in all state law enforcement and military entities.



Photo: Bárbara Italia Méndez Moreno (left), Ana María Velasco Rodríguez (center), Yolanda Muñoz Diosdada (right), women assaulted in Atenco in May, 2006 / Archive CENTER PRODH.

(continued on page 10).

fact that emigrating to the US may be the most viable option for a parent trying to feed his or her children. Likewise, training helicopter pilots is not going to help entire rural communities affected by natural disasters find the necessary economic opportunities to avoid taking the dangerous path of migration or to refuse to sell access to an airstrip in their communities to drug-traffickers. Access and training in the use of US arms control data-bases to trace illegal weapons after they have killed someone, while potentially helpful in combating increasing gun violence in the drug cartels, will not change the fact that by transporting drugs from southern Mexico to northern Mexico, a woman can earn the equivalent of nearly a year's wages and send her children to school.

Past experience has shown policies like the Mérida Initiative to be financially costly and to broaden the mandate of military operations, violating the human rights of civilians, all while *failing* to achieve sustainable gains in human security. While such law enforcement-driven operations can produce measurable results within the term of office of an elected official, they leave behind legacies of exacerbating security problems over the long-term as a result of diverting attention and resources from the true causes of the problems at hand. A ban on drug-trafficking can not be effectively enforced without removing at least part of the incredibly lucrative market demand in the US that drives the supply, which the Mérida Initiative does not address. History has proven time and time again that such law enforcement efforts merely divert trafficking routes, creating a geographic shuffle of social and criminal problems.

In this regard, world-renowned Harvard economist and international development expert Amartya Sen, backed by the United Nations, has explained that human security is about the security of people, not the security of states. When we make human beings and human rights central to our vision of human security, we see that the real threats to security include war, genocide, famine, extreme poverty, lack of access to healthcare, and natural disasters, among others. All of these threats feed into problems such as drug abuse, violence, or black-market economies, generating demand for organized crime, including drug-trafficking, border security threats, and arms dealing. Organized crime is of course a problem that must be addressed urgently in both Mexico and the United States, and a collaboration between two countries on equal footing, in which the needs and rights of all citizens involved are taken into account in the decision-making process would be reflective of countries with strong and participative democracies. In the absence of such circumstances, the conception of the Mérida Initiative, which is an aid package not a bi-national agreement, has not been such a process.

The Mexican government has not made public the basic information about this aid package, which, according to top US diplomat John Negroponte, originated from a direct request from Felipe Calderón to George Bush early in 2007. Instead of disseminating information about the initiative to the Mexican people, the State has largely left the media to publish opinion pieces based on speculation of what the aid package might contain. At time of print, the Mexican government has not asked participation from civil society, despite the fact that civil society has played a major role in responding to human security needs in Mexico since the 1980's.

In conclusion, the Mérida Initiative is characterized by a lack of human rights perspective, a human security approach that mistakes the security of states for the security of human beings, an absolute lack of available public information in Mexico, and a general disregard for public participation in a significant public policy initiative. It is time for the international community to stop supporting short-sighted policies such as this one, and to realize that without human rights-based public policies, there will be no human security.

10 years since Acteal: The call for justice continues

Ten years ago on December 22nd, 1997, Mexico witnessed one of the most brutal human rights violations in its recent history. The Acteal massacre in the highlands of Chiapas took the lives of 45 indigenous Tzotzil people (including 18 children), all of whom were members of the pacifist group Las Abejas. The victims were praying in a local church when members of paramilitary groups opened fire on them; officers of the Public Security Police, stationed just 200 meters from the church, witnessed the massacre which went on for many hours, but failed to stop it.

Ten years later, the legal proceedings meant to punish the perpetrators and provide compensation to the victims of the Acteal massacre remain incomplete, leaving the intellectual authors of this crime in total impunity. Despite recent assertions by Ernesto Zedillo, President of Mexico at the time of the massacre, that the Federal Attorney General's investigation into Acteal was both precise and transparent (La Jornada, 7 November 2007), legal proceedings have focused on only 15 individuals, all lower-ranking ex public officials. Of these individuals, only one has been sentenced to a considerable amount of time in prison (36 years), with the remainder of the sentences ranging from 3-8 years. All higher-level perpetrators remain unpunished, including the State Police Coordinator and the Director of State Public Security. Meanwhile, 87 indigenous civilians who were present at Acteal have been subjected to legal proceedings. (Data obtained from the Fray Bartolome de Las Casas Human Rights Center, Chiapas).

In 1998, the state Government of Chiapas initiated administrative procedures against a number of high-level public functionaries at the recommendation of the National Human Rights Commission (CNDH). These proceedings failed to yield a single sentence, yet the CNDH considered these actions to fulfill all the requirements of its recommendations.

Having exhausted internal options, in 2005 civil society organizations and victims took the case to the international level, submitting a petition against Mexico to the Inter-American Commission on Human Rights. The petitioners, who include victims and families, the Fray Bartolome de Las Casas Human Rights Center and Civil Society of Las Abejas, await the Commission's decision on the admissibility of the case.

In conclusion, ten years after the facts, the Acteal massacre continues to leave a stain of impunity on the political landscape of the country. It will not disappear until the facts are made clear and responsibility of intellectual authors of the massacre are officially held accountable.

The struggle for environmental defenders in Mexico continues.

Activists who seek to protect their local ecosystems continue to be under threat from illegal loggers, local government authorities and multinational companies. For Rodolfo Montiel Flores, defender of the forests and rivers of the community of Pizotla, Ajuchitlán Municipality in Progreso, state of Guerrero, the fight has been a long and difficult one. In the last eight years his life has changed dramatically due to his membership in the Organization of Peasant Environmentalists from the Mountains of Petatlán and Coyuca de Catalán (OCESP). In 1999, in response to OCESP's public actions to stop illegal logging in the area and its demands for action on the part of the government, a major military operation in the community was ordered. Approximately forty soldiers from the Mexican army entered the community, firing gunshots which killed one community member and later illegally detaining Rodolfo and his friend Teodoro Cabrera. Both men were tortured and sentenced to prison, Rodolfo for six years. In response to these acts, Center Prodh was part of a petition to the Inter-American Commission on Human Rights which in 2004 admitted the case and in 2006 held a hearing in which Rodolfo emphasized the responsibility of the military authorities and testified that the harassment against him had not ceased.

Currently Rodolfo is living in the United States after having applied for and in recent months been granted political asylum to avoid the risk to his life. His political asylum is a victory but not for the defense of the environment in Mexico.

Alongside Rodolfo's struggle comes that of environmentalist Ildefonso Zamora, his family and his community of San Juan Atzingo, Ocuilán municipality, State of Mexico (see *Focus* Issue 27 online for more details). Six months after the death of Ildefonso's 21-year-old son Aldo at the hands of a group of illegal loggers, two of the four murderers still remain at large, despite being clearly identified and having outstanding arrest warrants. President Felipe Calderón made public statements in July 2007 that he would commit to carrying out justice in the case, yet such justice had not arrived as the community gathered together on November 15th, 2007 to witness the passage of six months since Aldo's death.

That campaigns for environmental protection in Mexico should mean putting one's life in danger illustrates the need for stronger accountability of military and local authorities and their involvement in these violations.

Glossary

OACNUDH: *Oficina de la Alta Comisionada de las Naciones Unidas de Derechos Humanos en México* – Office of the United Nations High Commissioner for Human Rights in Mexico City. Established in 2002 in response to a government policy under President Fox which allowed for greater international cooperation and observation. One of the office's first achievements was the publication of a comprehensive study, the *Diagnosis of the Human Rights Situation in Mexico*, in 2003.

Istanbul Protocol: (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.) A comprehensive protocol that outlines the psychological, physical and forensic elements involved in the documentation of torture. The protocol was submitted to the UN High Commissioner on Human Rights in August 1999 on behalf of a number of international professional organizations including medical and human rights experts. The project was funded by the United Nations Voluntary Fund for Victims of Torture and the instrument now serves as an official UN document and a vital set of guidelines for the investigation of torture around the world.

Amicus curiae: The institution of *amicus curiae* is a judicial figure that consists in written and oral presentations that are carried out before courts by third parties who are outside of the legal conflict – that is to say, that they are not directly affected by it. These actors have a justified interest in the decision of the conflict, with the aim of expressing their opinions towards the issue at hand through expert insights to contribute to the judicial process. *Amicus Curiae* means, in a literal sense “friend of the court” or “friend of the tribunal”.

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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Human Rights in Mexico

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Bulletin, Issue 30, December 2007

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