



Centro de Derechos Humanos  
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# FOCUS

## Human Rights in Mexico

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#### **2. The Latin American Water Tribunal’s First Hearing and the Contamination of the Bay of Zihuatanejo.**

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The IV Summit of the Americas received widespread media coverage, mainly due to the street riots and the diplomatic conflict that emerged between Venezuela and Mexico, nevertheless, much more took place in the context of this event and the Mexican government will now have to comply with the human rights commitments made by the States during the Summit.

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The Centre Prodh filed a formal complaint before the FEMOSPP for the 1975 forced disappearance of David Jiménez Frago. However, in spite of the existing official evidence in the case, there is little hope to establish his whereabouts and to stop impunity given the persistent failures of FEMOSPP.

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On September 15, 2005, the environmentalist Felipe Arreaga was released and acquitted after being imprisoned for ten months due to an accusation based on planted evidence. However, to date the authorities have not answered national and international human rights organisations’ demands for full justice in the case.

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### **Development for Mexico Means a Struggle for Human Rights**

The Mexican government has implemented an important and active human rights policy at the international level that has provided the current administration with legitimacy and helped it to escape scrutiny from the international community. However, when it has to support the same position of respect for human rights during international negotiations, such as at the IV Summit of the Americas, or in the implementation of development projects at the national level, such as the construction of the large hydroelectric dam “La Parota” or commercial tourist projects such as the case in the Bay of Zihuatanejo, the issue of human rights falls into last place.

As it is explained in this issue of *Focus*, the implementation of a development project for the construction of a dam called “La Parota” in the state of Guerrero has already caused serious human rights violations in the area. Two people have died due to a situation mismanaged by different federal governmental bodies and local state authorities. The leaders of the movements opposing the construction of the dam have been falsely accused of serious crimes. Worse still is that the situation will likely be exacerbated if the project is finally implemented since this would be done with the opposition of a large number of the inhabitants in the area. Moreover, the construction of the dam will result in the violation of different economic, social and cultural rights and irreversibly damage the environment.

In addition to this, the Mexican government has failed to respond to the claims for justice and sustainable development made by groups of local inhabitants in the Bay of Zihuatanejo. Here the contamination of the Bay is the result of a series of deficiencies in the planning, implementation and regulation systems of a tourist development project, which has deteriorated the living conditions of the local residents and may cause irreversible damage to their health as well as to the environment. As a consequence of this failure by the government, the Centre Prodh has submitted this case to the Latin American Water Tribunal since the victims have not found any eco for their demands for justice at the national level. Similarly, the government has failed to take steps to stop situations of harassment against human rights and environmental defenders in the mountains of Petatlán and to tackle impunity of crimes committed during the so-called “dirty war”.

Meanwhile, the Mexican government claimed during the IV Summit of the Americas that regional economic integration is the road to follow in order to fight poverty and strengthen democratic governance. From our perspective, what is needed is to strengthen the governmental apparatus by implementing a series of structural changes in order to ensure an effective rule of law, which would prevent the commission of human rights violations such as the ones describe in this and other issues of *Focus*.

# **The Construction of the Hydroelectric Dam “La Parota”: A Development Project that Violates Human Rights**

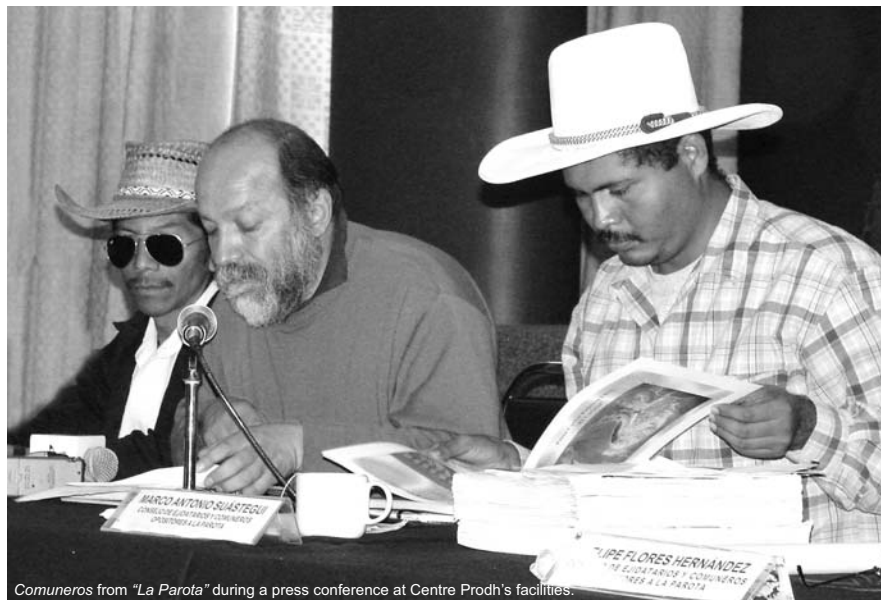
## **Introduction**

The construction of large dams worldwide and the problems they generate have been linked to the neoliberal development model in the current context of globalisation. This is understood as a model that, amongst other things, attempts to satisfy the population's basic needs by promoting the reduction of the State's participation in the administration of public services; the privatisation of state-owned companies; the implementation of free trade agreements; the growth in debt due to loans from the multilateral banks and other financial institutions; etc. However, from our perspective these measures have generated an increasing social polarisation and have provoked diverse human rights violations (see, for example, the Centre Prodh, “Unfulfilled Obligations”, July 2004 and the Centre Prodh “Human Rights and Economic Integration Processes in the Americas”, January 2005).

One of the measures encouraged by the States and the financial institutions to promote this development model has been the construction of dams, openly supported by the World Bank. It has been registered that in Mexico there are 25 dam construction projects, located mainly in the basin of the Usumacinta river. Apart from these there are several projects in the West Pacific, in the Centre-North and the South Pacific areas (this latter one where “La Parota” dam—the main subject of this article—is located). These constructions have the objective of producing electricity and supplying water mainly in urban areas (see [www.ciepac.org](http://www.ciepac.org)).

Nevertheless, the inhabitants directly or indirectly affected by these constructions, who generally are people living in the rural areas where the projects are carried out, do not benefit from these projects. In fact, the construction of large dams has been questioned in the 2000 annual report of the World Commission on Dams, created in 1998 under the auspices of the World Bank and the World Conservation Union (IUCN) to respond to the opposition to large dams. This document presents “recommendations and a new framework for the decisions on hydric and energy projects on the basis of the recognition of all actors' rights and the evaluations of risks that they face”. It also recognises the damages caused by these projects and the possibilities for other alternatives (Centro de Investigaciones Económicas y Políticas de Acción Comunitaria, A.C. “No seas Presa de las Represas. Manual para mejor conocer y combatir esta plaga”, Mexico, pp. 5-6).

The Federal Commission of Electricity (Comisión Federal de Electricidad, CFE) published the



Comuneros from “La Parota” during a press conference at Centre Prodh's facilities.

project for the hydroelectric dam “La Parota” in the state of Guerrero in 2002 and it will begin its activities in 2006. The construction of “La Parota” will have a cost of nearly 900 million dollars and the dam will have a generating capacity of 900 MW (CFE, “Proyecto Hidroeléctrico La Parota estado de Guerrero”, Mexico, 2002 and Senado de la República, “Gaceta Parlamentaria No. 94”, 2005).

However, this project was rejected in some communities by more than 50% of their population, and by almost all of the population in others. This rejection is because the construction will affect the daily lives and incomes of 21 *ejidos* and communities where people live fundamentally through what they grow and from the animals that they breed. The Centre Prodh together with the organisations from the *Espacio DESC* (ESCR Working Group), of which the Centre Prodh is part, is closely following the “La Parota” situation because of the grave human rights violations that have been present and those that will surely be committed if the project progresses.

## **General information on the “La Parota” dam construction project**

The project itself indicates that 21 plots of land will be affected; 17 are *ejidal* properties, 3 are party of community land and one is a private property. Combined they represent an extension of 14,300 hectares. The construction of “La Parota” will flood land in the following

municipalities: Acapulco (53%), Juan R. Escudero (23%) and San Marcos (24%). This involves 20 *nucleos agrarios*, meaning populations that have communal and *ejidal* land (see article 27 of the Mexican Constitution for the differences between these two forms of ownership). These *nucleos agrarios* have documents that recognise the land distribution by presidential resolutions that are officially registered. This land distribution began in the 1920s, with the exception of *Bienes Comunales de Cacahuatpec* (see below), which originated in 1881 and was not recognised formally until 1956 (Environmental Impact Assessment of the Hydroelectric Project “La Parota”, presented by the CFE and the “Manifiesto de Impacto Ambiental, MIA, del “Proyecto Hidroeléctrico de la Parota”, SEMARNAT, July 2004).

Through the “Environmental Impact Assessment of the Hydroelectric Project ‘La Parota’” (EIA) dated December 13, 2004, produced by the Ministry of the Environment and Natural Resources (*Secretaría del Medio Ambiente y Recursos Naturales*, SEMARNAT), the conditional approval for the project is granted, establishing the conditions under which the works and activities will be subjected (SEMARNAT, “S.G.P.A.- DGIRA.-DDY.-0718/04”).

Amongst those affected are the residents of the area called “*Bienes Comunales de Cacahuatpec*”, who possess 37,749 hectares, of which, according to the CFE, 1,594 will be

flooded. Additionally, there are 44 neighbouring towns that will be affected, not only by the drying process caused by the reduction of the Papagayo river, which will reduce moisture, but also by salinity to their lands caused by the deposit of sediments with a higher concentration of salt. This is the result of the evaporation of large amounts of the dam's water when exposed to the sunlight (Guerreros Verdes A.C. *Proyecto Hidroeléctrico La Parota. Impactos y Beneficios*, Mexico, 2005, p. 15). According to the EIA presented by the CFE to SEMARNAT in July 2004 (chapter IV), 3,048 inhabitants will be affected directly and 25,654 inhabitants will be affected indirectly by the dam.

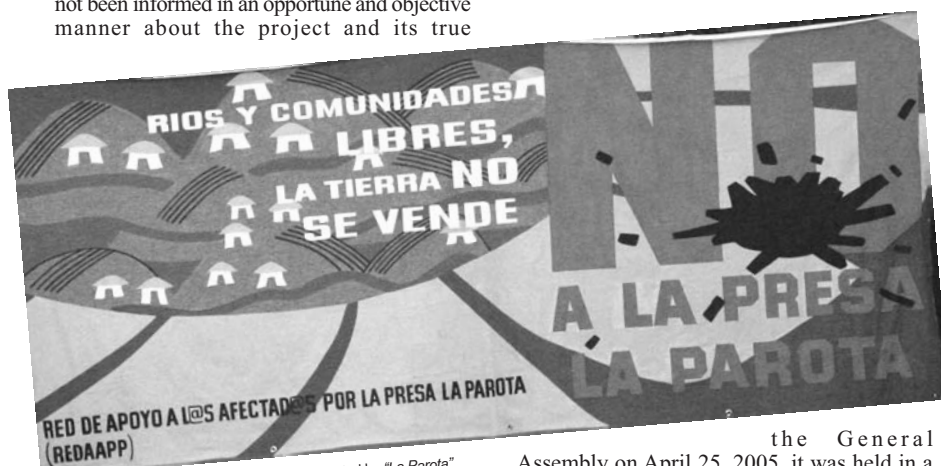
### Human Rights Violations

During this implementation period of "La Parota", the **rights to access to information, consultation and citizen participation** have been violated given that the inhabitants have not been informed in an opportune and objective manner about the project and its true

the PRI government in the past. This practice has divided the different communities, because as a consequence of these promises, some people have decided to support the project and others to oppose it, causing conflicts between the groups and radicalising the inhabitants' positions. The authorities have also not carried out a timely and sufficiently informed consultation process involving all people that would be affected, directly or indirectly, by the dam's construction, amongst these, *comuneros* and *ejidatarios*. Therefore, they have not been given the opportunity to participate in the dam's project with enough information to value that it would irreversibly affect their lives. A concrete example of this problem is that two General Assemblies from "Bienes Comunales de Cacahuatpec" did not comply with the relevant legal requirements (see articles 24 to 29 of the Agrarian Federal Law), and in spite of this, agreements that would affect all the population were reached at the Assemblies. For example, in the case of

two Assemblies but so far their lawsuits have not been solved.

Other rights violated in 2004 were the right to **personal integrity and security and to due process** as a result of the arbitrary detention of Marco Antonio Suástegui Muñoz, a spokesman of the opposition movement, Francisco Hernández Valeriano and three other *comuneros* who are part of the opposing group, who were detained on the basis of false charges for the crime of illegal detention and robbery committed against a member of the CFE's staff. This occurred on June 29, 2004, when a group of *comuneros* was obstructing the traffic in a peaceful manner during a demonstration to oppose the continuation of construction work. They stopped some CFE's vehicles, requesting an explanation about their presence in the site from the person in charge. The demonstrators requested that the CFE staff go with them to another community to talk with the majority of the representatives from the Council of *Ejidos* and Communities Opposed to "La Parota", (*Consejo de Ejidos y Comunidades Opositoras a la Parota*, CECOP). The CFE staff members agreed to this. Then, members from the CECOP asked the CFE's personnel to take away the machinery and to stop working because they had not been fully informed about the project. The person in charge voluntarily accepted to remove the machinery in 24 hours, leaving two vehicles as a guarantee and signing an agreement that was witnessed and signed by three traditional authorities. Days later, the person in charge of the CFE's staff changed this version and lodged charges against Marco Antonio and Francisco for the crime of illegal detention and robbery of the two vehicles. Marco Antonio, Francisco and three *comuneros* from different communities were detained at the end of July 2004, they were freed a week after in response to the pressure by the *comuneros* to do so. In addition to this false accusation, the local authorities intimidated at least four representatives by threatening them with detention on the basis of the same crimes. It is important to mention that in December 2004, the Prodh Centre received three reports of death threats, intimidation and harassment against Marco Antonio. The criminal process, the threats and the intimidation against *comuneros* continued throughout 2005.



Banner by the "Support Network for those affected by 'La Parota', that reads: "Free Rivers and Communities!, The Land cannot be Sell. NO to 'La Parota' dam!"

implications. This is because the CFE has only provided the local authorities (both formal and traditional), the representatives and some inhabitants with partial information, apparently intentionally, about the benefits and damages that the construction of the dam would cause. We can affirm that the information provided has been partial because according to what we have witnessed on site during our trips to the area, those who would be affected by the dam's construction have not been adequately informed regarding the environmental unbalance that would be caused. They have also not been informed that the limits and conditions established in the project by the CFE exceed that authorized in the EIA done by SEMARNAT in December 2004.

Likewise, in exchange for their conformity with the project, the inhabitants have been promised various social projects, bringing to mind the corporatist practices commonly used during

the General Assembly on April 25, 2005, it was held in a different place from that usually used, the organisers allowed individuals to attend who were not *comuneros*, and the legal quorum was not met. Additionally, the issues to be included in the agenda were not adequately discussed and it was agreed on to endorse the studies on the dam project and the minutes affirming this decision included falsified signatures. The Agrarian General Attorney's Office, a federal body allegedly in charge of looking after the *comuneros* and *ejidatarios* agrarian rights, endorsed all of these actions.

Similarly, in the last General Assembly carried out on August 23, 2005, the inhabitant's authorisation for the expropriation and the change of land usage was obtained. This Assembly was also announced and held in a different municipality without previous notification. During this Assembly, there was an excessive use of force, which stopped the opposing *comuneros* from participating and exercising their agrarian rights. The group of those opposing the dam has recently requested before the Agrarian Tribunals to nullify these

The social tension has been growing with the division of communities provoked by the CFE's actions and as a consequence of this tension Tomás Cruz **was killed** on September 18, 2005. Tomás was a *comunero* from Huamuchitos and he was opposed to the dam's construction. After participating in an Assembly with others that oppose the project, Tomás was on his way back to his community together with 30 others. A *comunero* from the group that backs the dam, tried to stop him but when doing so he shot at Tomás Cruz and killed him. In addition, Crispino Cruz Hernández, who supported the construction of the dam, was **also killed** on



November 8. The investigation into the causes of this death is in process, but it appears that he had personal problems with the person who killed him. However, his death was used politically by one of the supporters for the dam's construction, who tried to blame the representative of the opposition, Marco Antonio Suástegui, for encouraging violence.

### Consequences for the local population if the dam is built

Apart from the human rights violations mentioned above, we fear that as the dam's construction progresses, the following human rights violations will be committed:

In relation to the **right to communal property**, in the case of "*Bienes Comunales de Cacahuatpec*", the CFE, the Agrarian Attorney General's office, the Agrarian National Registry and the Attorney General's Office for the state of Guerrero, did not respect agrarian rights when accepting the agreements from the General Assembly carried out on August 23, 2005, as these agreements implied the start of a land expropriation process and the change of land usage, despite the fact that the Assembly was not carried out according to law, as it has been mentioned above.

If the dam's construction continues, it is foreseeable that violations to **the right to food** will also occur. This because it is likely that the communities' capacity to feed themselves from the products of their land will be diminished as there will be a reduction in the natural resources available since the flow of the Papagayo river, used to water their lands, will be reduced as a consequence of the dam's construction. Additionally, in time the loss of moisture will affect the land quality since it will dry out and become saline. This would even affect the neighbouring lands. Therefore the area's inhabitants will be affected because they have

traditionally fed themselves from the products that they grow, harvest and obtain from the river. There will also be secondary effects that would impact their rights to **work, to health, housing and culture**, in relation to their possibilities to maintain the communal life that they have enjoyed and to preserve their culture and traditions. This because it will be difficult for the people that will be displaced to continue to work on agricultural activities since the land distribution programme for *campesinos* that began after the revolution in 1910, ended a few decades ago and there is no more land to distribute. In CFE's 2002 project and the 2004 EIA it was pointed out that these people would be relocated, however, there is no specification as to the location where they will be sent. We fear that this displacement will push the population to settle in the misery belts around in the urban areas in Acapulco, which would change their lifestyle and they would have to accept informal and poorly paid jobs.

### Conclusions

The authority's actions, especially from the personnel of the CFE, offering to implement social works in exchange for the inhabitants' acceptance of the dam's construction, has resulted in changes to the daily life styles of inhabitants from several communities, which have as a common characteristic the division between inhabitants that accept the dam and those who oppose it (a group that is increasing). There is the feeling of uncertainty and tension in the *ejidos* where the authorities have not been able to carry out Assemblies to approve the expropriation. Likewise, two people have died in actions probably related to these disagreements. All of this also puts at risk the social fabric of the communities.

If the agrarian authorities that are analysing the petitions to nullify the Assemblies resolve that they are legal, the situation of those who

oppose the dam will be worsened. As a result, the expropriation decree will be published and the inhabitants currently living in the area where "*La Parota*" dam will be located will be displaced.

The *comuneros* and *ejidatarios* who oppose the dam's construction and the social and human rights organisations that support them, amongst them the Centre Prodh, request that the Mexican state fulfill its obligation to respect, protect and guarantee human rights, as defined in the national legislation, the UN International Covenant on Economic, Political and Cultural Rights and the "San Salvador" Protocol of the Inter-American system, amongst others, and to respect the principle of no regression contained in these instruments. Steps should also be taken to correct the human rights violations that have occurred.

To see the World Bank's standing on environmental issues, including the construction of dams, see:

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20669414~isCURL:Y~menuPK:344193~pagePK:98400~piPK:98424~theSitePK:95474,00.html#5>

CIEPAC's document "*No seas presa de las represas*" is available at: <http://www.ciepac.org/otras%20temas/represweb/>

The official documents on the "*La Parota*" project are available on SEMARNAT's web page: <http://portal.semarnat.gob.mx/semarnat/portal> (Go to "*mapa*", then "*Dirección General de Impacto Ambiental*", then go to the link "*Consulte el estado actual de su trámite en línea*" and use the following code to access the project: **12GE2004H0014**)



## The Latin American Water Tribunal's first hearing and the contamination of the Bay of Zihuatanejo

On October 19, 2005, the Latin American Water Tribunal (*Tribunal Latinoamericano del Agua*, TLA) presented the announcement for its next public hearing during a press conference held in Mexico City. This hearing will take place simultaneously to the 4<sup>th</sup> World Water Forum to be held in Mexico City from March 16 to 22, 2006, and it will analyse different conflicts generated by the use of water in Latin America.

### What is the TLA?

The TLA is an international autonomous and independent body for environmental justice, created to help to solve environmental conflicts

in Latin America. The TLA will become aware of, judge and morally sanction cases of ecocides and serious damage to bodies of water and hydric systems in the region, as well as violations of the fundamental right of the Latin American population to an adequate quantity and quality of water and of other rights linked to this right, such as the right to health, housing, a healthy environment, food, etc. The TLA's principles were particularly inspired by the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Dublin Statement on Water and Sustainable Development (Dublin, 1992), the Rotterdam Declaration (1983), the Amsterdam Declaration

(1993), and the Paris Declaration (1998), as well as by the conclusions of the conferences: UN Conference on Water, Mar del Plata (1977), Global Consultation on Safe Water and Sanitation for the 1990's, New Delhi (1990) and the Noordwijk Conference (1994).

### TLA's history

The tribunal's activity began in Central America, where the Central American Water Tribunal held two hearings, one in 2000 and another in 2004. However, the basis for the tribunal comes from much earlier experiences in Europe and Latin America. The first hearing of a tribunal





Javier Bogantes, president of the Latin American Water Tribunal (TLA) (second left) and other members (Gilberto Lopez and Danilo Antón) and Silke Helfrich, director of the Henrich Böll Foundation Mexico, during the tribunal's pre-session.

of this kind took place in Rotterdam (Netherlands) in 1983, where the well-known case of the contamination of the Rhine basin was judged. The dissemination of this case and the tribunal's activity contributed to the adoption of contamination control policies. Apart from this, the tribunal in Amsterdam judged serious cases of the contamination of water in different countries in Asia, Africa, Latin America and Oceania. In 1993, a National Water Tribunal was held in Brazil, which examined cases of mining and radioactive contamination, and the impact of the construction of large hydroelectric dams in the Brazilian territory.

### **The TLA's work methodology**

Although the TLA is a tribunal of conscience and has no judicial power, it will issue judgments or verdicts of an ethical nature, as well as sentences on the detrimental actions committed against the Latin American citizen's hydric patrimony. These judgments will be based on well-backed accusations with sufficient legal support and scientific and technical evidence. The international dissemination of the sentences issued by the TLA will hopefully promote a moral condemnation and will push for the search of alternative solutions to hydric conflicts.

A jury composed of nine people from different disciplines will issue the verdicts of the cases. These individuals will be from different countries within Latin America or other continents. In past hearings, members from Brazil, Uruguay, Colombia, Central America and Cuba have participated. Currently, the new jury for the Mexican hearing is being shaped, and its composition will be announced next February. The TLA also has a scientific-technical commission composed of a

multidisciplinary team that is in charge of evaluating and selecting the cases that are presented. (See TLA's web page for more information).

The scientific-technical commission has already received cases from different Latin American countries that were submitted for its consideration by civil society organisations representing the interest of the individuals/communities that are directly affected. These cases involve problems caused by water contamination or by activities related to the use of water that put at risk the way of life of communities in Argentina, Brazil, Bolivia, Peru, Panama, Nicaragua, Mexico, as well as a case presented by several Central American countries regarding mining exploitation in the region.

The selection criteria for the cases includes issues such as the relevance of the case, either for the importance of the hydric resource or for the affected population; the rigor of the argumentation on which the suit is based; and the lack of a solution to the conflict at the national level. The TLA will soon make public the cases that will be presented at the public hearing to be held in March 2006. For each case, the TLA insists on respecting due process, which implies that the defendants and plaintiffs will have an equal right to participate.

### **The case of the Contamination of the Bay of Zihuatanejo before the TLA**

The "*Miguel Agustín Pro Juárez*" Human Rights Centre (Centre Prodh) and the Network of Environmental Organisms in Zihuatanejo (ROGAZ for its Spanish abbreviation) presented the case of the contamination of the

bay of Zihuatanejo before the TLA's scientific-technical commission. This commission is currently analysing the case and, if accepted, it will be presented before the TLA at the March hearing.

The bay of Zihuatanejo in the state of Guerrero, an international tourist resort together with Ixtapa, faces high degrees of water contamination produced in part by the direct discharge of residual waters that have been deficiently treated or that have not been treated at all. This situation was worsened by the recent construction of a tourist complex called "Puerto Mio", which includes three hotels, condominiums and villas, a Marina for more than 100 ships, a pool, restaurants, nightclubs, parks and other establishments. In addition to this, a wall of rock of approximately 72 metres, known as a breakwater (*espigón*), is being constructed which forms part of the infrastructure required to construct a pier for cruise ships within the tourist complex. This wall stops marine currents from moving naturally, which would otherwise allow the waste to circulate. As a consequence of the contamination, the fishermen and traders' *modus vivendi* in the bay has been deeply affected (See *Focus* Fall 2004 for more details on this case).

While the contamination of the bay has been verified by different governmental authorities who have confirmed that the high level of pollution of the waters of the bay has caused damage and deterioration to the natural resources found there, the government has taken very few steps to address this situation, violating the human rights of the residents of the area. In light of this, the case has been presented as a paradigmatic case of violations to the right to a healthy environment, the right

to health, and the right to work, all of which are established in the UN International Covenant on Economic, Social and Cultural rights and at the regional level in the “San Salvador” Protocol.

## Conclusion

The TLA provides an opportunity for organisations and victims who have not obtained answers to their demands within the national judicial systems, to seek justice at the international level. As pointed out by the director of the TLA Javier Bogantes, if the international norms of consuetudinary law and the dispositions contained in the international treaties and conventions ratified by the States were complied with, “...the TLA would have no reason to exist”.

It is hoped that if the case of the contamination of the Zihuatanejo Bay is accepted by the TLA, there will be strong recommendations given to the Mexican government in order to improve the environmental and human rights situation in this area, which would benefit not only the local inhabitants but also national and international tourists and visitors.

For more information on the Latin American Water Tribunal and/ or the Central American Water Tribunal see: <http://www.tragua.com>

The majority of the international instruments mentioned in this article can be found at:

<http://www.unesco.org/water/wwap/milestones/index.shtml>

<http://www.waternunc.com/gb/decfingb.htm> (Paris Declaration)



From left to right: Luis A. Macias (Centre Prodh), Ericka Serrano legal adviser from the ROGAZ, and José Santos Torres, president of a cooperative society of fishermen, during the TLA's pre-session.

## In Relation to Human Rights, the IV Summit of the Americas Represents more than Street Riots and Diplomatic Conflicts

The IV Summit of the Americas held in Mar del Plata, Argentina, on November 4 and 5, 2005, which focused on the issue of “Creating Jobs to Fight Poverty and Strengthen Democratic Governance”, received widespread media coverage internationally and particularly at the national level, mainly due to the street violence produced by radical protesters (*piqueteros* -unemployed workers of Argentina-left-wing political parties, anarchist organisations, etc.) and the diplomatic conflict that emerged between Venezuela and Mexico as a result of the Mexican position of openly supporting the Free Trade Area of the Americas (FTAA) during the Summit. Nevertheless, much more also occurred at this event and it is important to highlight this summit's implications for human rights in Mexico.

### Regional advocacy plan

The “Miguel Agustín Pro Juárez” Human Rights Centre (Centre Prodh) together with the

*Centro de Reflexión y Acción Laboral* (CEREAL) (both organisations are part of the National Network of Civil Organisations “All Rights for All”), participated actively in the advocacy plan agreed on and backed by hundreds of human rights organisations in the region as part of the International Coalition of Organizations for Human Rights in the Americas (the Coalition). This plan had the objective of influencing the States' official positions during the IV Summit of the Americas and to share experiences with other organisations and individuals in the region during the III Peoples' Summit, celebrated as an alternative to the official summit.

Before the official summit took place in Mar del Plata, we looked to influence the commitments assumed by the States, amongst them Mexico, which would be reflected in the Summit's declaration and plan of action. With this in mind, we attended the meetings organised by the Mexican Ministry of Foreign Affairs to

discuss the summit's official documents. The State representatives of the Summit Implementation Review Group (SIRG), which is part of the Summit Secretariat, prepared these documents and they were negotiated in closed-door meetings, allegedly on the basis of the documents that were the result of diverse consultation forums with civil society organised by the Secretariat.

Active participation during the meetings with the Mexican chancellery and at the forums was difficult because most of the time the version of the documents that were given to civil society organisations for the discussion were not the versions most recently approved by the States. Furthermore, there was no guarantee from the Mexican government's representatives that our proposals would be considered by the Mexican delegation. The representatives stated that they were not able to commit to our petitions because the text of the documents was subjected to the negotiations with the other States. We were



also told that our suggestions could not be incorporated into some paragraphs because these had already been negotiated and agreed on by the States and that they were not subject to changes. However, we were able to verify that this was not the case as there were modifications to such paragraphs subsequent to these discussions.

Apart from these meetings, we also participated in the “Meeting of the Foreign Relations Ministry with representatives from the Civil Society” organised as part of the summit’s agenda on November 3. When talking before the chancelleries’ representatives, we demanded a strict respect, protection and guarantee for human rights, based on a vision centred on the interrelation, indivisibility, universality and interdependence of human rights. On behalf of the Coalition, the Centre Prodh also expressed our inconformity regarding the deficient methodology for participation and the lack of timely access to and publication of the negotiated documents, based particularly on what we experienced at the national level with the Mexican government.

### **Why are the Summits of the Americas relevant for the Mexican population?**

The Centre Prodh took part in this advocacy plan because the Summit of the Americas is a forum where the States make decisions during sessions at the highest governmental level that have consequences at the national level. The States look to achieve consensus and set priorities for joint governmental action. Although these debates and decisions may not always formally or explicitly refer to human rights, these will surely be affected due to their transversal and fundamental nature. In the Summits, the adoption of new regional legal instruments, the creation of monitoring mechanisms for national and Inter-American processes, as well as the adoption of certain public policies that directly affect the lives of the individuals and peoples throughout the continent, are proposed (see Centre Prodh, AI, CEREAL, press release, October 31, 2005). In light of this, civil society’s participation is important in order to monitor the Mexican government’s position in this type of events.

One of the most important and concerning issues for civil society in Latin America, which has been traditionally discussed during the Summits of the Americas, is the implementation of the FTAA. This issue resulted in a harsh debate between the member nations of the Common Southern Market (MERCOSUR) and Venezuela and those that are part of the North American Free Trade Agreement (NAFTA), particularly Mexico. Any decision that involves the FTAA’s implementation will undoubtedly impact negatively the interests of a large part of Mexican society, especially those living in a vulnerable situation. This can be inferred from the experience with the implementation

of a deficient integration process through NAFTA. Therefore, the role of the Mexican organisations during the Summit preparation process was to ensure that the Mexican State would not forget its commitments on human rights issues when agreeing on political positions and assuming further obligations.

The Centre Prodh’s position at the Summit, as with the other organisations of the Coalition, was that it is not possible to ignore the interrelation, indivisibility, universality and interdependence of human rights, nor to consider the States’ obligations in other spheres without first respecting the primacy of human rights, particularly over free trade agreements, according to the commitments assumed solemnly by the States through legally binding international instruments and contained clearly in article 103 of the UN Charter (see the Coalition’s declaration for the IV Summit of the Americas).

From our perspective, regarding our perception of the needs of Mexican society, we considered it fundamental that the States make a special recognition in the Summit’s official documents about the primacy of human rights. This is because considering the experience of the sub-regional integration through NAFTA, if the principle of primacy had been respected, many human rights violations, such as violations to the rights to health, work, development, food and access to information, would not have been committed in the last 11 years of the implementation of NAFTA (see the Centre Prodh, “Unfulfilled Obligations”, July 2004 and the Centre Prodh “Human Rights and Economic Integration Processes in the Americas”, January 2005). Unfortunately, this principle was not recognised in the official documents and on the contrary, the Mexican government had an agenda that clearly supported a regional economic integration, which, if implemented, would further put at risk groups living in a vulnerable situation in the Mexican society.

### **Achievements of the regional advocacy plan**

Nevertheless, by working jointly with the Coalition, it was achieved that the States explicitly recognised in the Declaration of Mar del Plata “...that the universal promotion and protection of human rights, including civil, political, economic, social, and cultural rights on the basis of the principles of universality, indivisibility, and interdependence, as well as respect for international law, including international humanitarian law, international human rights law, and international refugee law are essential to the functioning of democratic societies...”. The States also reaffirmed their commitment to strengthen and enhance the effectiveness of the Inter-American human rights system (IV Summit of the Americas, Declaration of Mar del Plata, par. 63, November 2005).



Posters from the III People’s Summit, Mar del Plata, Argentina, November 2005.

Apart from this, in the context of the III Peoples’ Summit, the Centre Prodh participated as part of the Coalition, in the workshop “Human Rights Protection to Tackle Poverty and Strengthen Democracy” where we shared our experience before the Inter-American Commission on Human Rights on the issues of economic integration processes and human rights (see Newsbrief, *Focus* Fall 2004).

### **Conclusion**

To date, the policies agreed on by the States at the Summits of the Americas have not produced the results hoped for in relation to human rights. Nevertheless, our work has provided us with tools that we may use in the future when the Summit process finally enters into the implementation phase for the commitments assumed by each country in the region, in which the Mexican population will be directly affected. This will be the moment when we will be able to remind the Mexican State that, as a country participant in the IV Summit of the Americas, it has the obligation to promote and protect human rights, including civil, political, economic, social, and cultural rights, on the basis of the principles of universality, indivisibility, and interdependence for the benefit of the Mexican population.





Not only is Don David Jiménez' forced disappearance fully documented, but it also presents a particularity. This case is evidence of how the Mexican State repressed with impunity people involved in the armed struggle and their closest family members, generating a State of terror similar to that present in other countries such as Argentina and Chile.

### **The political participation of the Jiménez family**

Don David was the father of David Jiménez Sarmiento, one of the main leaders of the *Liga*. His involvement in clandestine activities was mainly because he wanted to be close to the activities of his sons, as apart from David, his son Carlos also actively participated in armed opposition movements. The risk they faced and the continuous harassment by DFS agents were the cause of Don David's incorporation into the *Liga's* Printing Committee.

Other members of the Jiménez family were also pressed into taking similar decisions. Along with the Jiménez Sarmiento brothers, other family members and relatives who were involved were Arturo Rivas Jiménez and Ángel Delgado Sarmiento, Don David's nephews; his daughters-in-law Teresa Hernández Antonio and María Eugenia Calzada Flores; and his son-in-law Joaquín Porras Baños. By the end of the decade of the 1960s, four of Don David's family members were executed, three had disappeared, and most of those who survived were tortured or harassed by the secret police. Several members of the Jiménez family even left the country seeking refuge abroad.

### **The formal complaint before the FEMOSPP**

The formal complaint for Don David Jiménez' forced disappearance was made before the FEMOSPP in the midst of numerous doubts about the FEMOSPP's work. For example, the Centre Prodh and other civil organisations have

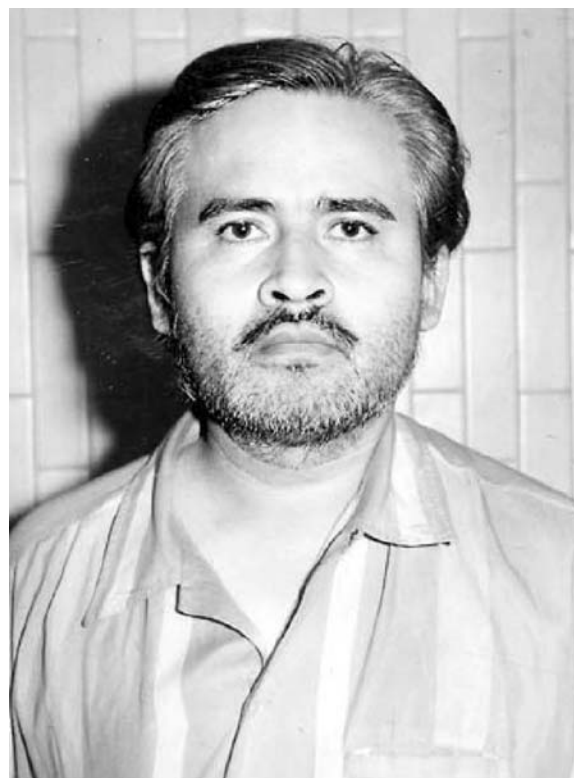
criticised the Office's reticence to investigate these cases as forced disappearance, as well as its obstinacy to call for trial only on the basis of the crime of illegal detention (see *Focus* Summer 2005). It is for this reason that different organisations, amongst them Centre Prodh, in the context of the anniversary of the Tlatelolco massacre on October 2, once again highlighted the current administration's lack of fulfilment of stopping the impunity of the crimes of the past (*La Jornada*, October 3, 2005).

However, as has occurred in other cases, there is no other body in Mexico that can investigate Don David's whereabouts. For this reason, the filling of the formal complaint for his disappearance has been done together with the joint participation (*coadyuvancia*) of the Centre Prodh, which has provided elements to the investigation and documented the difficulties that victims of these crimes face in order to access justice.

Moreover, it is important to point out that by filling a formal complaint we aim to achieve the clarification of the events; the satisfaction of the right to truth for the victims' families and Mexican society in general; a just reparation for the victims' families; the identification of those responsible, legal action against them and their due sanction; and that measures of no-repetition for such events be established. Our demand has its foundation on the American Convention on Human Rights, the Inter-American Convention on Forced Disappearance, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Declaration on the Protection of all Persons from Enforced Disappearance, together with other international human rights instruments.

### **Conclusion**

In the Centre Prodh we believe that the right to truth and justice of the victims, their families



Don David Jiménez Frago, disappeared since 1975. Photo taken while detained by the DFS. General Archives of the Nation Vol 11-235, Exp L-27, Foja 119. It is a public image.

and society in general, is a legitimate demand that has to be fulfilled, as we consider that a true rule of law cannot be built under the shadow of impunity. Because of this, the current government needs to take concrete actions in order to rectify the FEMOSPP's grave deficiencies so that cases such as that of Don David Jiménez Frago's do not remain impune.

## **Felipe Arreaga was released and acquitted but... what about full justice?**

### **Felipe's liberation**

On September 15, 2005, Felipe Arreaga was released and acquitted after being imprisoned for ten months due to an accusation based on planted evidence. Felipe was falsely accused of participating in the murder of Abel Bautista, who was the son of Bernardino Bautista, the local *cacique* (local political boss) who accused Felipe and 13 other activists of the murder. This accusation was due to Felipe's active environmental work in the Organisation of Peasant Environmentalists from the Mountains of Petatlán (*Organización de los Campesinos Ecológicos de la Sierra de Petatlán y Coyuca*

*de Catalán*, OCESP) to stop the rapid deforestation of the area in the state of Guerrero. Felipe was one of the founders of the OCESP and when he opposed the deforestation, he entered into conflict with *cacique* Bautista, who works closely with a timber merchant company in the area. Felipe was detained on November 3, 2004 but he was not freed and acquitted until ten months later, despite all of the conclusive evidence that was in his favour (see *Focus* Spring 2005).

His liberation and acquittal was in a large part due to the solid defence work by the Tlachinollan Human Rights Centre of the

Mountain (*Centro de Derechos Humanos de la Montaña "Tlachinollan"*), combined with mobilisations at the national and international level denouncing the fabrication of the evidence (AI, AMR 41/038/2005, Press release). His release not only confirms Felipe's innocence but also the innocence of the 13 other *campesinos-ecologistas* (peasant-ecologists) who were accused of the same murder on the basis of the same false evidence. ("Tlachinollan", Greenpeace and the *Red TDT*, Press Release, September 19, 2005, No. 05108).

## Concerning pending issues

During a press conference held on September 19, 2005 in Mexico City, given by representatives from Tlachinollan, Amnesty International (Mexico Section), Greenpeace (Mexico) and the Network of National Organisms "All Rights for All" (*Red TDT*), of which the Centre Prodh is part, Felipe Arreaga explained that he was disappointed about the newly elected governor of Guerrero (from the centre-left Democratic Revolution Party, PRD) Zeferino Torreblanca, who during his electoral campaign had promised to protect and promote respect for human rights. Felipe explained that previously he believed that with the historical change of the political party in power in the state (this is the first time that Guerrero is under a different administration from the Revolutionary Institutional Party, PRI) the situation in the Mountains of Petatlán would improve. However, on the contrary, when Felipe was detained, Torreblanca did not support Felipe's struggle and he even agreed with the unjust acts committed by the public prosecutor's office (Attorney General's Office of the state of Guerrero) and the judicial staff, pointing to Felipe as a criminal who should be sanctioned, regardless of the evidence that existed and proved his innocence.

Alejandro Calvillo, the director of Greenpeace Mexico, stated during the press conference that "the state and federal governments must pay attention to this case and not allow this to happen again. Additionally, in order to stop the impunity of *caciques* in the region, supporting the communities that live in the forests is necessary because they are the only ones that have the effective possibility to dramatically stop the deforestation that our country is suffering, the fifth most serious in the world" (Tlachinollan, press release, op cit).

It appears that Felipe's detention aimed to stop the environmental movement in the Mountains of Petatlán as the arrest warrant against OCESP members represents a formal threat for other *campesinos-ecologistas*, including Albertano Peñaloza, who was attacked on May 19, 2005 by unknown individuals possibly linked to Bautista. Two of Peñaloza's sons were killed and he himself was badly injured (*Focus Spring 2005* and Tlachinollan press release op. cit.).

## A long history of threats and fear for the safety of OCESP's members

It is important to remember that the OCESP has had a history of attacks in relation to its environmentalist activism. In 1999, Rodolfo Montiel and Teodoro Cabrera, members of the OCESP, former prisoners of conscience of Amnesty International, and recipients of the Goldman Environmental Prize, were arrested, tortured and unjustly accused of crimes they

did not commit. Rodolfo and Teodoro spent over two years in prison and while they were released on November 8, 2001, as a result of the national and international pressure on the Fox administration, their innocence has not been recognised yet by the Mexican government, and those responsible for the violations committed against them have not been identified and sanctioned. Neither has full compensation for damages been provided nor have measures been adopted to prevent cases such as this one from happening again.

Despite being free, Felipe Arreaga and his wife, Celsa Valdovinos (also an environmental defender), still fear for their safety because the *cacique* Bernardino Bautista has renewed his threats against them. Bautista said during the last hearing that: "if this matter is not solved at the court, I will solve it outside here in my own way" (Tlachinollan Press Release, op cit). Because of this situation, AI issued an Urgent Action the following day of Felipe's release requesting the Mexican government to guarantee the safety of Felipe, Celsa and other OCESP members (UA AMR 41/037/2005, September 16, 2005).

In relation to this, environmentalist and human rights organisations have requested that the Mexican government guarantee the safety of environmental and human rights defenders; find and sanction those responsible for the attack against Albertano Peñaloza; investigate and put on trial those public servants that collaborated in Felipe's accusation based on false evidence; that the state police forces stop protecting Bernardino Bautista; that the 13 arrest warrants against environmental activists be immediately cancelled and that the truth about Abel Bautista's murder be investigated. Finally, they have requested that the government enter into a dialogue, without disqualifications to members of environmental organisations, in order to build solutions to the environmental and social problems in the Mountains of Petatlán (Tlachinollan Press Release, op cit).

## International recognition for their activism

While in prison, Felipe was granted the "Chico Mendes Award" in August 2005 by the US organisation Sierra Club and he was also adopted by AI as prisoner of conscience. After his release, human rights groups in Germany, Austria, Belgium and Ireland invited Felipe and Celsa to visit their countries in order to tell people about their situation and to share their experiences. They also participated in public events and official meetings in these countries. Celsa took part in the Third Dublin Platform for Human Rights Defenders organised by Front Line and the International Foundation for the Protection of Human Rights Defenders in Ireland, where 100 defenders from all over the world were present, sharing

high-risk experiences and situations of persecution caused by their human rights work.

## Conclusion

During the press conference for Felipe's release, Edgar Cortez, the executive secretary of the *Red TDT*, reminded us that when Rodolfo Montiel and Teodoro Cabrera were freed, the environmentalists and human rights organisations requested that the Mexican government looked into the causes of the grave situation in the state of Guerrero, where human rights and environmental defenders were harassed and their activities criminalized, causing serious human rights violations. He recalled stating that, on the contrary, that appalling situation will be repeated again. Precisely because the government ignored these requests at the time, the situation was indeed repeated. By ignoring NGOs requests and not implementing concrete actions to address the causes of these human rights violations, the Mexican government is failing to comply with its international human rights obligations and to deliver and ensure a safe and democratic country where human rights and environmental defenders can work risk-free. In fact, to date, there has not been any follow-up by the government to the petitions mentioned above. It is hoped that the government's attitude towards this situation will improve, but in order to generate the adequate conditions necessary to achieve actual progress, support from the international community for the requests made by Mexican NGOs will be essential.



Felipe Arreaga freed on September 15, 2005 after 10 months of unfair imprisonment.

## Additional information on the EZLN's "Other Campaign"

As explained in our last issue of Focus, on September 16, 2005, the Zapatista National Liberation Army (EZLN) was to report on the results of the "Other Campaign's" preparatory meetings. On this day, a plenary meeting was held in the Zapatista community "La Garrucha", where the Zapatistas insisted that the "Other Campaign" belonged to the organisations, collectives, social movements and individuals that joined it, amongst them the Centre Prodh (see Newsbriefs Focus Summer 2005). To date, more than 700 organisations and 1,500 individuals have joined the "Other Campaign".

In this meeting, the EZLN announced that it would lead a trip through different zones of the country that will begin on January 1, 2006 and will end on June 24, 2006, in order to consult and listen to those who joined the "Other Campaign" throughout Mexico. In this context, different organisations have requested safety measures from the federal government for the EZLN and for those who have joined the campaign and are participating in the diverse activities linked to it. Nevertheless, there have already been public denunciations of alleged harassment by police authorities against one of the groups that joined the campaign called the "Sexta Coletas" (*La Jornada*, November 1, 2005).

The EZLN has also announced two additional joint actions. First, in October, the EZLN asked for those that have joined the campaign to support the workers from the Mexican Institute for Social Security (*Instituto Mexicano del Seguro Social*, IMSS) to defend their social rights through mobilisations and the diffusion of the dismantling of social security by its privatisation, supported by the Federal government (*Rebeldía* magazine, October 2005). Second, the EZLN requested cooperation from civil society to help the Zapatista communities in Chiapas affected by hurricane Stan because some of these communities have been excluded from the government's support for the hurricane victims (*La Jornada*, October 24, 2005).

We hope that the development of the "Other Campaign" will be free of repression and that the beginning of the EZLN's trip through the country will be smooth. However, we will stay alert in case there are more allegations of human rights abuses.

## Pending justice for the death of Digna Ochoa

October 19, 2005, was the fourth anniversary of Digna Ochoa's death. Digna was a human rights defender and a former collaborator at the *Centre Prodh* whose death occurred when she was just 37 years old. Last February 24, 2004, a Collegiate Tribunal ordered her case to be reopened upon a request from Digna's relatives, which was backed by human rights organisations. Her body was exhumed on June 28, 2005, but according to the Attorney General for the Federal District, this exhumation did not contribute to any new findings (*La Crónica*, July 5, 2005). Digna's family has not yet made public the results and conclusions of this exhumation.

The Federal District Attorney General filed the case on September 19, 2003 after having concluded that Digna had committed suicide. The *Centre Prodh*, provided an analysis and questioning of this decision, as it was not based on solid and conclusive evidence (see *Centre Prodh*, press bulletin XI-0105, October 20, 2003 and *Centre Prodh*, *General Observations made as a Result of the Special Prosecutor's Conclusion of the Investigation in the case of Digna Ochoa*).

## The unconstitutionality of *arraigo* in Mexico

In September 2005, the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación*, SCJN) determined that the concept of *arraigo* is unconstitutional. As a consequence of this decision, article 122 of the Criminal Proceedings Code for the State of Chihuahua will be nullified (*La Jornada*, September 21, 2005). According to Amnesty International (AI) the decision by the SCJN is an important step towards strengthening the protection of human rights in the country (AI, Public Statement, AMR 41/041/2005, September 22, 2005).

House *arraigo* is contemplated in the Federal Code for Criminal Proceedings, the Federal District's Code for Criminal Proceedings, the Federal Law against Organised Crime and other State codes for criminal proceedings and it is grounded on secondary laws that exceed the forms of detention established by the Constitution. *Arraigo* is a form of preventive detention done in "safe houses" where individuals suspect of having committed a crime are imprisoned. The judicial police and public prosecutors watch these places and they serve to confine suspects while the investigation to gather evidence for their accusation is carried out.

The Mexican authorities violate diverse human rights when applying the *arraigo* against someone, such as the rights to freedom of movement, due process, an adequate legal defence, legal security and the presumption of innocence. AI has also expressed its concern for the physical integrity of people subjected to *arraigo* because it promotes the practice of torture and intimidation and encourages the use of coercion (see AI, Urgent Action AMR 41/013/2005, Pascuala Gutiérrez Álvarez, May 2005).

The above occurs because the corresponding preliminary investigation does not need to be finished in order for the *arraigo* to legally proceed. In other words, even though the Public Prosecutor's Office (the only body able to carry out criminal proceedings) has not determined if there is enough evidence to proceed legally against the accused, it can request the suspect's detention during the time of the investigation. These periods of detention may be up to 30 days (renewable). The *arraigo* in the Federal Law Against Organised Crime may have further consequences against the suspect, since he or she may be detained for up to 90 days in the place, manner and way requested by the prosecutor. This goes against the principles of presumption of innocence and due process contemplated in article 14 of the UN International Covenant on Civil and Political Rights and article 8 of the American Convention on Human Rights of which Mexico is part since 1981.

Nevertheless, the impact of the SCJN's decision is still under scrutiny, because it has to be considered as jurisprudence in order to be used by courts all over the country. It was hoped that the federal legislators would raise the judges' decision to the Constitutional level so that its reach would not be limited and that it would be accompanied by a full recognition of the presumption of innocence. However, on September 28, a deputy from the Mexican Green Party (*Partido Verde Ecologista de México* PVEM, see glossary) presented a bill to reform article 16 of the Constitution to include the concept of *arraigo* so that its application is no longer unconstitutional (see "*Gaceta Parlamentaria*" No. 1850). We hope that this bill will not prosper and that instead, measures will be carried out to reform the unconstitutional secondary laws that contemplate the *arraigo*.

The "*Gaceta Parlamentaria*" is available at:  
<http://gaceta.diputados.gob.mx/Gaceta/59/2005/sep/20050928.html>



## Glossary

**CFE**, *Comisión Federal de Electricidad*, Federal Commission for Electricity, a governmental body in charge of providing the services of the generation, transmission and distribution of electricity.

**Comunidad agraria**, *Agrarian community*, a piece of collective property that was returned to indigenous communities who were expelled from them during the 18<sup>th</sup> and 19<sup>th</sup> centuries by owners of large estates. The individuals who own this sort of land are called a “*comunero*” or “*copropietario*”, meaning the person who is the owner of a portion of a common and indivisible piece of land. All decisions that affect this common land have to be made through the consultation with and agreement of all *comuneros*.

**EIA**, *Manifiesto de Impacto Ambiental*, MIA, del “*Proyecto Hidroeléctrico de la Parota*”, Environmental Impact Assessment of the Hydroelectric Project.

**Ejido**, a piece of collective land with a determined extension assigned to peasants by the State. This land was previously in the hands of owners of large estates (*latifundistas*) and subsequently it was expropriated and distributed to peasants. Members of the *ejido* are called *ejidatarios*.

**FEMOSPP**, *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*. A prosecutor's office created and designated to investigate crimes that mostly occurred during the “dirty war” period in Mexico.

**PAN**, *Partido Acción Nacional*, National Action Party, centre-right party of President Fox.

**PGR**, *Procuraduría General de la República*, Federal Attorney General's Office, has federal jurisdiction for investigating crimes.

**PRD**, *Partido de la Revolución Democrática*, Party of the Democratic Revolution, centre-left opposition party.

**PRI**, *Partido Revolucionario Institucional*, Revolutionary Institutional Party, which held power for 71 years until defeated in the July 2000 elections; the period of its rule is known as the *priísta* government.

**PVEM**, *Partido Verde Ecologista de México*, Mexican Green Party, a family controlled party that does not necessarily reflect the tendencies of Green Parties in other countries. Currently constructing alliances with the PRI.

**SEMARNAT**, *Secretaría del Medio Ambiente y Recursos Naturales*, Ministry of the Environment and Natural Resources.

PRODH was created in 1988 as an institution dedicated to the promotion and defence of human rights. It has four programs of work: integral defence, educational processes and monitoring and public policy; and three work areas: international relations, communication and organisational development. PRODH has consultative status with the United Nations Economic and Social Council and it also has the status of Accredited Organisation with the Organisation of American States.

PRODH works with groups throughout Mexico to consolidate human rights protection. Since its founding, it has given effective support and solidarity to groups and persons who have suffered injustice, poverty, and marginalisation.

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# FOCUS

Human Rights in Mexico

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