

# FOCUS



## Human Rights in Mexico

Miguel Agustín Pro Juárez Human Rights Centre, AC

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### A special recognition for nearly 20 years of daily struggle

The "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh), was recently awarded a special recognition status for being one of the three finalists for the second edition of the *Premio de Derechos Humanos Rey de España*, an award instituted by the Programme on Democracy and Human Rights of the University of Alcalá and the Spanish Ombudsman. This award seeks to honour public or private bodies in Spain, Portugal and Latin American countries that have performed outstandingly in the defence, promotion and fulfilment of human rights and democratic values.

The jury that assessed the candidatures consisted of the following personalities: The Spanish Ombudsman, the Head of Alcalá University, the International Cooperation Secretariat (part of the Ministry of the Interior and the Spanish Cooperation Agency), the President of the Inter-American Court of Human Rights, the President of the International Federal of Ombudsmen, the Director of the UNESCO's Human Rights Office, the Head of Spanish Radio & Television and the President of EFE Agency. The jury's Secretary was the director of the Programme on Democracy and Human Rights of the Alcalá University.

Due to the high number of candidatures submitted and their high quality, the competition was tight. The jury voted three times and eventually selected three finalists, the Myrna Mack Foundation from Guatemala, the *Liga de Mujeres Desplazadas* from Colombia and the Centre Prodh. The Myrna Mack Foundation was granted the premier award, but the jury agreed to award a special recognition to Centre Prodh and the *Liga de Mujeres Desplazadas* for their justified merits, and their firm social commitment and active participation in the defence and promotion of human rights. This special recognition will be delivered to Centre Prodh representatives on April 11, 2007 in Madrid, Spain

The award is an acknowledgment of the work carried out by the Centre Prodh since 1988 and therefore is a tribute to all those who have been part of Centre Prodh over the years, the religious order "Company of Jesus", past and current teams members and the national and international organisations that have worked with us in a joint effort towards the realisation of human dignity and the achievement of human rights. We thank you all for helping us in our daily struggle.

## Human Rights in Oaxaca:

### *Between Authoritarian Rule and the Struggle for a Better Life*

#### Context

The current conflict in Oaxaca must be analysed within the context of its historical and social causes: regional cacique-type rule, an authoritarian government, lack of transparency in public administration, and an inefficient and corrupt judicial system. It is important to mention that Oaxaca is one of the poorest states in the country; 67% of its population, roughly 2,349,570 people out of 3,506,821 live below the poverty line (Arellano; "Oaxaca: La Pobreza en Cifras", Transición Oaxaca, October, 2006). According to the government of Oaxaca,

its territory is home to 16 indigenous groups who comprise the sector mainly affected by poverty.

As explained in the previous issue of *Focus*, last May, 2006, Oaxacan teachers affiliated with the *Sección 22*, the local branch of the National Union of Education Workers (SNTE), began to mobilise in support of a number of labour demands. In response, the Government of the State of Oaxaca, headed by PRI Governor Ulises Ruiz Ortiz, violently repressed the movement on June 14, 2006, when the state police tried to forcibly remove the teachers' protest camp from the City of Oaxaca's main square.

To counter the government's actions, a large number of organisations in solidarity with the teachers condemned the governmental repression and formed a broad social movement that was later called the Popular Assembly of the Peoples of Oaxaca (APPO). This coalition expressed the demands of different sectors and exposed the long-neglected political and social exigencies of the State of Oaxaca. The widespread discontent materialised in a shared demand: the resignation of Governor Ulises Ruiz (see *Focus* issue No. 26, August, for further details).

### The human rights situation

Through our site visits, we have witnessed the worsening of Oaxaca's political and social crisis, starting last August, when we first reported on the conflict in the state. Because of this worrying situation, the "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh) has carried out a number of actions in order to inform the public and the international community of the situation in Oaxaca, including lobbying, political visibility, case documentation and legal defence.

Among these actions the Centre Prodh together with fifteen national and international human rights organisations and networks, conducted an observation mission from October 4 to 8, through which we documented and denounced serious violations of human rights. These violations have resulted from both acquiescence by government bodies and erratic actions, from both the federal and the state governments, which have ended in serious human rights violations such as; torture and mistreatment,

violations of the right to freedom of speech, the right to liberty and personal safety, the right to due process and the right to not being held incommunicado.

We also documented indiscriminate intimidation and repression by the state government against the Oaxacan people and against the APPO leaders and their relatives. We concluded then that the conflict in Oaxaca goes beyond the teachers' mobilisation; that most of the violence was not caused by the social movement; and that the widespread anxiety in the state disrupted social networks (for further details see "*Informe Preliminar: Violaciones de los Derechos Humanos en Oaxaca. Del paro magisterial a la movilización popular*", available on our website).

The crisis entered its most acute stage on October 27, when a series of violent attacks against APPO members were perpetrated. These attacks were attributed to provocateurs in support of the governor of Ulises Ruiz. On October 27, former President Vicente Fox ordered the Federal Preventive Police (PFP) to intervene in Oaxaca and remove the teachers' and APPO's protest camps. In spite of these accusations against Ruiz' government and the PFP's abusive performance in San Salvador Atenco last May.

As a result of the PFP intervention, serious violations of human rights arose, including attacks against people's physical integrity, torture, inhumane and degrading treatment, arbitrary detentions, and the killing of 20 people, including American Indymedia journalist Bradley Roland Will.

### Attacks perpetrated by armed paramilitary corps

The testimonies and visual evidence collected allowed us to affirm that armed civilians have been operating in support of the state government in Oaxaca. Evidence shows that these people are sympathizers of the Institutional Revolutionary Party (PRI), who are acting under the protection of Governor Ulises Ruiz and the federal police forces.

The murder of Bradley Roland Will on October 27, which was perpetrated by people linked to the PRI municipal government of Santa Lucía del Camino (a



Photo: Demonstration by victims at Santo Domingo square in Oaxaca city, November 2006. Archive Centre Prodh/TG

suburb of Oaxaca City), is proof of the official protection of these groups. The responsibility of people linked to the governor in the homicide was fully exposed in videos filmed by journalists and widely published.

According to evidence collected, the attacks by armed paramilitary groups follow a pattern: armed gangs of supporters of the governor threaten the lives and personal integrity not only of APPO members and teachers, but also of people not involved in the conflict.

### Excessive use of force

The PFP has once again used an excessive use of force and as a consequence there have been several people injured. In addition, the killing of José Alberto López Bernal exemplifies the unwarranted use of force by police. According to official information, this man died on October 29 due to trauma caused by a teargas projectile shot by a PFP member. From the circumstances of the event and the type of weapon that caused the death, it was possible to determine that the projectile was aimed directly at the victim's body, which implies the intentional use of excessive force by the PFP.

It is important to note that the death of Alberto Jorge López Bernal shows the same characteristics as the homicide of Alexis Benhumea, committed during the incursion of the same police force to end the social and political conflict in San Salvador Atenco

in May, 2006 (see *Focus* No. 26, August for further information). The similarities in both cases allow us to state that the misuse of crowd control tools by PFP officers has caused at least two deaths; however, no proper investigation has been conducted and no sanctions have been placed on those responsible.

### **Arbitrary detentions, torture and violations of due process**

During November and December, 2006, the PFP detained arbitrarily hundreds of individuals who were allegedly linked to the APPO. In the period between October 27 and November 3, we documented the arbitrary detentions of 106 people. Days later, when the APPO organised a march on November 25, the PFP arbitrarily detained 141 people between November 25 and 26. These latter ones were sent to a high security prison in the state of Nayarit a few days after their detention, which is an action that we consider illegal. The detentions by the PFP were indiscriminate and affected people unrelated to the conflict. One example is the case of Felipe Sánchez Rodríguez, a human rights defenders devoted to his work with children, who was detained on November 25 and remains in prison.

The aforementioned detentions were made by the PFP outside its jurisdiction. In addition, we were able to confirm that the PFP kept the detainees under its custody for periods longer than established in the law and failed to present them before a ministerial or judicial authority. We affirm this based on testimonies from detainees collected by Centre Prodh staff and members of the *Red Oaxaqueña de Derechos Humanos* (Oaxacan Human Rights Network, RODH). During these detentions, acts of torture and cruel, inhumane and degrading treatment were committed, as the PFP officers used excessive, irrational and disproportionate force, causing grave injuries to most of the detainees.

In order to comply with the legal framework, the Attorney General's Office of the State of Oaxaca (*Procuraduría de Justicia del Estado de Oaxaca*) improvised a "Mobile Attorney Office" (*Fiscalía Móvil*), which travelled to the various places where detainees were being held. This way,

the authorities pretended compliance with the Constitutional provision (Article 16) that calls for the immediate presentation of detainees before a *Ministerio Público* (Public Prosecutor, MP). In practice, the PFP kept the detainees in its custody in places that are not adequate for such use, including military air bases, where the detainees were forced to spend the night with their hands tied with industrial quality plastic bands. While held incommunicado, detainees were subjected to beatings, kicks, painful positions and sleep deprivation. PFP officers hit them on their backs with the butt of their weapons and walked on top of them. They were also verbally abused and threatened because of their alleged affiliation with the Oaxacan social movement. A special case is that of Gerardo Jiménez Vázquez, who suffered broken ribs and damage to his lungs and one kidney as a result of the PFP officers' brutality.

All of the detainees, whom we were able to interview, were forced to appear before the MP without legal assistance and prior knowledge of their charges. Although some of them have been released, they are still subject to the inefficiency of a corrupt judicial system.

As of today, the Oaxacan conflict has left 20 people dead and hundreds of people illegally detained, tortured and mistreated. The APPO claims that 24 people have been killed in connection to the conflict. Currently, the majority of detainees have been released on parole, but continue to be prosecuted. Other detainees have been relocated to local jails in the State of Oaxaca.

The Centre Prodh presented this situation before the UN Committee Against Torture (CAT) at its 38<sup>th</sup> session. In response, the CAT expressed its concern regarding violations of human rights in Oaxaca and recommended that the Mexican government use force only as a last resort. It also recommended the government carry out investigations of human rights violations, especially those committed against detainees, in order to identify, judge and punish those who are responsible (CAT, "Conclusión y Recomendaciones del Comité contra la Tortura", CAT/C/MEX/CO/4, Nov. 21, 2006, par. 18)

### **A hesitant CNDH**

The role of the National Commission on Human Rights (CNDH) in the Oaxacan



Photo: Preparation of barricades by PFP officers, Oaxaca city, November, 2006. Archive Centre Prodh/TG



recommendation. The CNDH issued its preliminary report on December 18. This report does not acknowledge the documented human rights violations, and simply concludes that the city of Oaxaca "...continues to be an area where the necessary conditions for the observance and respect for fundamental rights do not exist yet" (CNDH, "*Informe preliminar sobre hechos ocurridos en la ciudad de Oaxaca a partir del 2 de junio de 2006*", Conclusiones, Dec. 18, 2006).

### **The authoritarianism and social complexity of the conflict**

The current situation in Oaxaca is ignominious. In the last few months, most APPO leaders have been illegally detained. The main leaders of the movement were detained four days after the new administration took office, which has generated an environment of incertitude and distrust. The Mexican government has postponed the movement's initial demands, while APPO members channel their efforts towards the defence of their leadership. The new government has also made it clear

that freedom of expression and dissent would not be allowed and that arbitrary actions would be permitted too.

### **Conclusions**

The Oaxacan conflict is complex and multidimensional. It is not limited to the city of Oaxaca, but rather extends to other regions in the state and exposes several problems that the Federal government has the political and legal obligation to address, such as poverty, repression, the manipulation of government bodies, etc.

One of the outstanding issues in this conflict is law enforcement. The government has used a flawed discourse of legality to justify the illegal repression of a legitimate social movement. It has continued to discredit actions of dissident groups, placing them in the realm of illegality. Whenever social frustration and discontent turn into a demand for the fulfilment of rights, as has happened in Oaxaca, the State response has been to criminalise the protest and movements.

Today in Oaxaca there are constant violations of the rights to life, freedom of speech, personal safety and due process, as well as the right of legal protection against torture, inhumane and degrading treatment, and being held incommunicado. In no detention to date have detainees been presumed innocent until proven guilty; neither have detainees been adequately informed about the charges against them; nor have they been provided with the time and adequate means to prepare their defence; or been allowed access to a lawyer of their choice and granted free communication with him/her.

The actions by the government are wrong because they annul the legitimate demands of individuals and collectives, and encourage human rights violations. The Centre Prodh will continue assisting victims of repression in Oaxaca, but it is necessary that the international community also supports the action by human rights groups since the government alone has failed to do so.

## **Constant Injustice in San Salvador Atenco**

As explained in the last issue of *Focus*, the municipal government issued a prohibition on May 3 and 4 against local flower growers to stop them from selling in the streets, which was the cause of the social and political conflict that originated in San Salvador Atenco. The flower growers confronted police forces, with the backing of the local social movement called *Frente de los Pueblos en Defensa de la Tierra* (FPDT). As a consequence there were violent clashes between police forces and members of the FPDT, which resulted in brutal repression by state and federal police forces acting under the orders of the state and federal ministries on citizen security. This repression generated serious human rights violations that not only affected those directly involved in the social conflict but also people who had no relation to the conflict at all.

The "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh) and other human rights organisations documented serious human rights abuses such as violations of due processes; the killings on May 4, of Francisco Javier Cortés Santiago, a 14-year-old minor shot by a police officer, and of Alexis Benhumea, a 20-year old student, who initially was in coma after being hit by another police officer with a teargas bomb, and then died on June 7. Furthermore, dozens were tortured and ill-treated and 211 people were arbitrarily detained.

The 47 female detainees reported sexual aggressions; 27 out of them reported pinching and biting of their breasts, groping of their genitals, and oral, vaginal and anal rape. Most of these sexual aggressions occurred during the transfer of victims from the place they were detained to the

prison. During their transfer most of them were forced to pull up their tops and to look down, so that they could not see what was happening around them or who was participating (see *Focus* issue 26, August 2006 for further details).

### **Poor performance by Mexican government: UN Committees**

As a part of our defence strategy, the Centre Prodh together with the World Organization Against Torture (OMCT) and the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM), presented two alternative reports before two UN Committees. One report was presented before the UN Committee on the Elimination of Discrimination against Women (CEDAW) on August 14 and, another one before the UN Committee

Against Torture (CAT) on November 7 (both reports are available at our website and OMCT's website).

During the Mexican government's presentation before the CEDAW in August, the members of the governmental delegation justified their actions against the people in San Salvador Atenco, alleging that those who were detained were members of a violent social movement that endangered national security. The experts expressed their outrage at the Mexican delegation's statement and affirmed that violence against women, such as that experienced by women in San Salvador Atenco, was not acceptable under any circumstances.

These worries were clearly expressed in the Concluding Observations of both Committees that mentioned similar concerns for the "...degrading and discriminatory acts against women during the police operation in San Salvador Atenco" (our own translation, CAT, Concluding Observations, par. 19) and about "...the persistence of the widespread and systematic violence against women" (see CEDAW, Concluding Observations, August 25, 2006, par. 14).

The CEDAW requested that the Mexican government ensure that the Special Prosecutor for Violent Crimes Against Women (FEVIM) is given jurisdiction over the crimes against women in San Salvador Atenco in order to guarantee the

prosecution and punishment of the perpetrators. The CAT explicitly urged the government to carry out a prompt, effective and impartial investigation and to assure that those responsible for the abuses are adequately sanctioned (CAT, idem). Both Committees requested that the Mexican government guarantee proper social, physical and psychological assistance to the victims to aid their rehabilitation and integration into society. The CAT members considered this case of such gravity that they requested that the Mexican government presents a follow-up report within a year to inform on the fulfillment of the recommendations.

#### Current situation

Despite the recommendations by the UN bodies, and in addition to several formal petitions by victims and their representatives demanding a prompt and impartial investigation, the results have been limited.

Regarding the legal situation of the citizens charged for their alleged involvement in the events of May 3 and 4, 189 people (47 of them women) who were indicted on May 10, still face criminal procedures for the crime of attacking communication routes, 28 (21 men and 7 women) of whom face the additional accusation of kidnapping. Most detainees have already been freed on bail, but these 28 are still incarcerated. At the state level, there have not been significant developments into the

killings of Francisco Javier Cortés Santiago and of Alexis Benhumea.

In terms of the situation of the women, both the state and federal Attorney Generals are carrying out simultaneous investigations. At the state level, CNDH filed 23 sexual abuse charges before the Attorney General's Office of the *Estado de México (Procuraduría General de Justicia del Estado de México)* in May 2006. Of these 23 charges, only one police officer was clearly identified by the only woman that did not have her face covered during the transfer, because she was forced to travel completely naked. Instead of charging this police officer for rape or torture, he was indicted with the crime of "libidinous behaviour", which carries the lesser prison penalty of one to four years and a small fine. At the state level, the legal proceedings are under way and, the evidence is currently being presented. Since most women had their faces covered and were, thus unable to identify their aggressors, it is difficult for them to accuse specific individuals, which is a significant limitation.

At the federal level, the Centre Prodh has continued advising 14 women before the FEVIM, but its actions have been slow since May 2006, when the FEVIM began its investigations on the cases of sexual abuse against 16 women. This despite that the CEDAW issued a specific recommendation to the Mexican government requesting that the FEVIM fully assume the criminal investigations of the allegations of sexual abuses by women, and that the Centre Prodh presented a formal petition before the FEVIM on this basis.

We fear that if the FEVIM does not quickly take responsibility for the full criminal investigation into the abuses, the state Attorney General's office will be appointed by the judge to do so in all cases, once there is a sentence against the aggressors at the state level for libidinous behaviour. This is worrisome because we consider the investigation by the state Attorney General's office to be biased and may jeopardise the assurance of a fair trial. For these reasons, we have constantly requested the full assumption of the investigation by the federal authorities, specifically the FEVIM.



Photo: From left to right, Isabel Uriarte (Centre Prodh), Claudia Hernández García, victim of sexual violence and Michel Maza (Red TDT), during press conference on CAT's recommendations, November, 2006. Archive Centre Prodh/TG

## Conclusions

There has been limited reaction from the Mexican government to the series of recommendations by national and international human rights bodies.

The criminal investigations into the human rights violations carried out in San Salvador Atenco have developed slowly, and the results are far from satisfying for the victims. The Attorney General in the *Estado de México* has conducted a biased

criminal investigation into the abuses against women, and an extremely slow investigation into the other serious abuses, such as the killings of two people, one of them a minor. At the federal level there has been no clear reaction to the recommendations by the UN bodies. Despite that the Mexican government is currently chairing the UN Human Rights Council.

In the meantime the victims of all the abuses continue to mourn the loss of their

loved ones and cope with the trauma of abuses; while most detainees still face unfair trials and have to cope with traumatic experiences in order to carry on with their lives.

The Centre Prodh and other human rights NGOs keep on backing the victims, with the support of the international community. Nevertheless, if these abuses go unpunished, the human rights violations that happened in San Salvador Atenco will continue occurring in Mexico.

## The Case of the Peasant-Environmentalist in the Inter-American System

On October 23, 2006, the Inter-American Commission on Human Rights (IACHR) held a hearing to analyse the merits of the case of illegal detention, torture and fabrication of crimes committed against the *campesino-ecologistas* (peasant-environmentalist) Rodolfo Montiel and Teodoro Cabrera, who are founding members of the Organisation of Peasant-Environmentalists of the Sierra de Petatlán (OCESP), based in the Sierra de Petatlán, State of Guerrero. The IACHR's goal during the hearing was to gather evidence in order to determinate whether the Mexican Government violated the American Convention on Human Rights.

### Background

As members of the OCESP, Rodolfo and Teodoro, peasants from the Costa Grande region of the State of Guerrero, had devoted themselves to the defence and protection of forests in the Sierra de Petatlán since 1998 by opposing illegal logging in the area's woodlands. However, as a result of their activities as environmental activists, they were subjected to harassment, torture and unfair trials.

Members of the military detained Rodolfo and Teodoro illegally, on May 2, 1999. Their detention took place during a raid of the whole town. At the moment of the raid Rodolfo and Teodoro were having a

meeting with three other men. Two of them escaped but one was killed when shot by the military and Rodolfo y Teodoro escaped initially but were later on found and apprehended. During their detention, they were tortured and ill-treated and were not presented before a judge but until May 7. Both were forced to confess the crime of bearing prohibited weapons, the crime of bearing weapons that are exclusively for the use of the army (which the Army falsely planted on them) and the cultivation of marijuana. They were later subjected to an irregular judicial process, after which Rodolfo was convicted to 6 years of imprisonment and Teodoro was convicted to 10 years of imprisonment, based on confessions obtained by means of torture.

A number of national and international organisations condemned the human rights violations against Rodolfo and Teodoro and joined an intense campaign denouncing their treatment. In 2000 they were both internationally recognised for their activism, Amnesty International declared them to be prisoners of conscience and Rodolfo was awarded the Sierra Club's Goldman Environmental Prize. In 2001 they were granted the Chico Mendez Prize.

The two environmentalists were unjustly imprisoned for two and a half years, until President Fox ordered their release on humanitarian basis on November 8, 2001. Five years after, however their innocence

still has not been acknowledged, while Rodolfo Montiel and Teodoro Cabrera suffered physically and psychologically from their detention; those responsible for the their human rights violations have not been identified, and therefore they have not been punished by the military justice system. There has not been any reparation and no preventive measures have been adopted (see *Focus* issues 22, 24, 2005 and other past issues for more detailed information).

### The Inter-American Human Rights System: A Means to Achieve Justice

To counter this repeated impunity, on October 25, 2001, the "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh), CEJIL, Sierra Club, Greenpeace, and Rodolfo's and Teodoro's wives, submitted a joint complaint to the IACHR denouncing the violations of human rights against Rodolfo Montiel and Teodoro Cabrera, including the right to personal liberty, the right to physical integrity and safety, the right to judicial protection, and the right to freedom of speech and association, recognised in the American Convention on Human Rights.

The case was admitted by the IACHR on February 27, 2004 (IACHR, Report No. 11/04. Admissibility). On October, 23, 2006 a hearing took place to analyse the merits of the case. Rodolfo Montiel and



representatives from Centre Prodh, CEJIL, Greenpeace-México participated in this hearing who, in addition to supporting Rodolfo's testimony, delivered arguments and evidence proving the alleged violations of human rights.

During the hearing, the Mexican government sought to convince Commissioners that the conflict was of an agrarian nature, arguing that the plaintiffs had a criminal record before their detention, and that their release was not an implicit recognition of their innocence.

The government's version of the facts was based on false information, which

Commission on Human Rights (CNDH), in its recommendation 08/2000 (July 14, 2000) had documented, through official responses issued by the Ministry of National Defence (SEDENA), that at least 40 members of the military participated in the detention of the plaintiffs.

Government representatives further claimed that it was impossible to present the detainees before a competent judicial authority immediately because they lacked the operative resources to do so. We completely refuted this claim based on the information documented by the CNDH at the time of its recommendation, which demonstrated that during Rodolfo and Teodoro's detention, there was a helicopter available to the army personnel.

Also, the Mexican government claimed that the soldiers simply reacted to an armed attack by Rodolfo and Teodoro, and that their goal was to confiscate arms and destroy a marijuana plantation owned by Teodoro. These claims were refuted too, since on August 14, 2002, the Second Collegiate Court of the State of Guerrero had already verified these claims and acquitted the defendants of the crimes of carrying prohibited arms and cultivating marijuana, due to contradictions in the law enforcement officials' accounts of the type of arms that were allegedly carried and the failure of officer to demonstrate the existence of a marijuana plantation.

attributed to the detainees were proven by their confession (which was obtained under torture), according to the guarantee of procedural immediacy, that attributes the greatest importance to the declaration made closest to the commission of the crimes. The government thus neglected an opinion issued by the IACHR after a visit to Mexico in 1996 that reads: *"The Mexican State is construing the guarantee of procedural immediacy in a way which, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons"* (Report on the Situation of Human Rights in Mexico, IACHR, 1998, paragraph 315). Similarly, the same government representatives showed that they had no understanding of the invalidity of a confession made before an authority other than the judicial authority.

Commissioners present at the hearing expressed their explicit concern that the plaintiffs have not received a proper reparation. Furthermore they were worried that the accusation of torture was turned over to the military jurisdiction, thus neglecting again the IACHR criteria on this issue. Based on the evidence submitted at the hearing, the IACHR will issue its report on the merits of the case. If the Mexican government does not accept its recommendations, the case will fulfil the requirements to be submitted to the Inter-American Court.

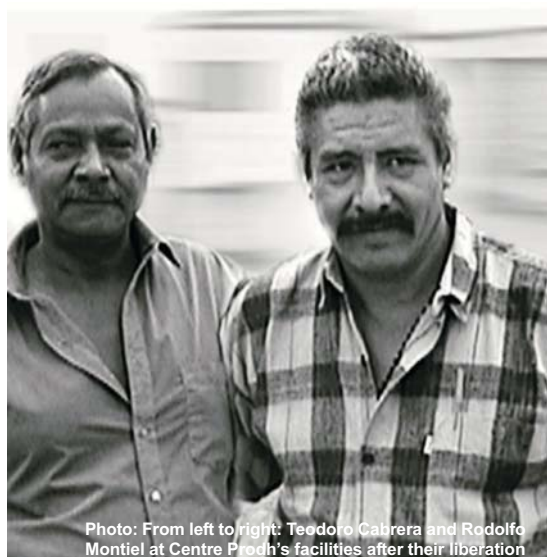


Photo: From left to right: Teodoro Cabrera and Rodolfo Montiel at Centre Prodh's facilities after their liberation in November 2001. Archive Centre Prodh

contradicted previous official responses issued by government agencies. For instance, they argued that only 5 officials participated in the detention of Rodolfo and Teodoro; even though the National

Representatives of the Mexican government also demonstrated their ignorance not only regarding the case, but also the Inter-American jurisprudence. They stated that the crimes falsely

### Conclusions

We hope that the IACHR will issue a full report on the merits of this case, and that justice will be delivered to Rodolfo Montiel and Teodoro Cabrera eventually, because, as stated by a legal principle states: if justice is not prompt, it is not justice.

## A general human rights assessment 2000-2006

Last November, the "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh) released its assessment of the human rights accomplishment during the past administration. We focused on the structural deficiencies and made a series of recommendations that we hope will be taken into consideration by the current government.

### Impunity

One of many issues left unresolved by the last administration is the prevalence of impunity in cases of human rights violations due to the inefficiency of the judicial agencies in charge of their investigation and punishment. Among the most significant cases of



Photo: Presentation of our Human Rights Assessment 200-2006, from left to right: Emilio Álvarez (Mexico City's Human Rights Commission), Luis A. Macías S.J. (Director, Centre Prodh), Magdalena Gómez (Expert on indigenous issues) and Martín Barrios (Tehuacán Valley Human Rights Commission).  
Archive Centre Prodh/TG

impunity are the massacres of *Acteal* in Chiapas on December 22, 1997, in which 45 Tzotzil indigenous people were murdered by a paramilitary group; *Aguas Blancas*, on June 25, 1995, in which police forces killed 17 peasants and seriously injured 25; and *El Charco*, Guerrero, on June 7, 1998, which resulted in the murder of 11 people and the injury of five. The relevant authorities have failed to punish those responsible for the massacres, to compensate the surviving victims and to implement prevention measures.

The same impunity has been present in the case of the crimes committed during the "dirty war" in Mexico (approximately from the 1960s through the 1980s), investigated by the Special Prosecutor's Office to Provide Attention to Events that Probably Constitute Federal Crimes Committed Directly or Indirectly by Public Servants Against Individuals Connected to Social and Political Movements of the Past (FEMOSPP). This case is analysed in more detail in the newsbrief section of this issue of *Focus*.

### The deficient judicial system

Another issue of concern for the Centre Prodh is the flawed criminal law system. In 2001, the Centre Prodh, along with the Lawyers Committee for Human Rights, conducted a study through which we detected deficient laws and practices in the criminal law system that persisted

throughout the last administration and often facilitated unsubstantiated and unfair accusations against victims of human rights violations. In Congress a legislative reform that seeks to replace Mexico's inquisitorial justice system with an accusatory system based on the principle of presumption of innocence is still pending.

This reform is necessary in order to synchronize the Mexican criminal justice system with international human rights instruments and reduce the use of preventive imprisonment in the judicial processes.

### Social and Political Violence

We are extremely concerned about the continuing governmental repression and political and social violence against dissident social movements. We documented eight cases of intimidation and harassment against communities in resistance (see glossary at the back) during Fox's term. In a number of the country's regions, we reported 22 situations in which the Mexican government carried out actions in order to repress and criminalise dissidence, such as in the towns of San Salvador Atenco, State of Mexico in May, 2006, and in Oaxaca beginning in May of 2006 (see the relevant article in this issue of *Focus*).

We also recorded four incidents that exemplify the assassination attempts, retaliatory attacks and other human rights violations against union leaders. In addition, we registered five cases in different states in which the government used the judicial system to criminalise protests by fabricating crimes. In response to this, the Centre Prodh demands from the current government to guarantee the physical integrity of people affected by government repression; to release political dissidents; and to conduct independent and impartial investigations to clarify such abuses, sanction repressors along the chain of command, and implement preventive measures.





### **Militarization of Police Forces**

The Centre Prodh is worried for the serious human rights violations by the Federal Preventive Police (PFP) since its inception in 1999. This because there have been high levels of impunity related to its abusive practices of power, and the growing levels of militarisation among its members. The PFP has had a deplorable performance during its years in operation, and innocent people have been victims of violations of the right to freedom of association, of extrajudicial executions and torture. In addition, the PFP has been highly inefficient in addressing the problem of insecurity and high levels of crime in the country. Regarding the PFP's deficient performance, the Centre Prodh recommends, among other things, the establishment of a de-militarisation program, to adopt internal regulations on the use of public force that adheres to recommendations from international human rights agencies, and the creation of a civil monitoring mechanism.

### **Attacks against human rights defenders**

We have documented 34 such attacks against human rights defenders in different states. These attacks include robberies in advocates' houses and workplaces, harassment, threats and physical attacks; the misuse of judicial systems, campaigns to discredit them, extrajudicial executions, and forced disappearances; and impunity arising from the investigations of human rights violations against advocates. To address these issues, the Centre Prodh recommends greater protections for human rights defenders so that they can develop their work, and the establishment of a protocol for the proper investigation on human rights violations against defenders.

### **Violence against journalists**

The Centre Prodh documented 24 situations involving serious human rights violations against journalists, such as extrajudicial executions, harassment and aggressions (threats and physical attacks), judicial harassment (false charges), and censorship. We recommend, modification of legislation containing legal sanctions against journalists and the establishment of a protocol for the proper investigation

of human rights violations against journalists.

### **Indigenous Peoples**

In relation to the situation of indigenous peoples in Mexico, we consider the reform to Article 4 of the Constitution on April 2001 (on the indigenous peoples' self-determination and autonomy) to be a major setback. This reform should have reflected the bill drafted by the Commission for the Concorde and Pacification of Chiapas (COCOPA) and agreed to by the Zapatistas movement and the government in 1996, but it did not do it. Furthermore the government passed other legislation during the last administration, which in practice deprives indigenous peoples of their right to be consulted and allow for the plundering of their natural resources. We recommend reforming the Constitution and other relevant legislation based on the COCOPA's proposal and on the Convention 169 of the International Labour Organisation (ILO).

### **Poverty**

We believe that the economic model pursued by the past administration has led to the implementation of economic policies that have given priority to fulfilling commercial commitments without taking into consideration the State's obligation to respect, protect and fulfil human rights. These policies have hindered in the accomplishment of economic, social, cultural and environmental rights. The rights most undermined by existing poverty are the right to work, due to the high levels of unemployment and underemployment; the right to healthcare, because of the limited access to social security services, especially for unemployed or underemployed people; and the right to a healthy environment, due to the lax regulation that allows corporations and individual to make investments without protecting the environment. In response to this, we suggest that the government prioritises its human rights commitments over its trade-related obligations in order to comply with the recommendations made by international human rights bodies.

### **Conclusion**



After evaluating relevant aspects of human rights issues during Vicente Fox's administration (2000-2006), the Centre Prodh concluded that it neglected its responsibility to respect, protect and fulfil human rights in Mexico. Thus, the incoming government has many human rights issues to address and the human rights organisations will continue demanding their fulfilment.

For further information, see the report "Derechos Incumplidos, violaciones legalizadas. Los derechos humanos en el sexenio 2000-2006", available on our website.

## Lydia Cacho:

### A year of constant *struggle*

#### Context

After exposing a network of pedophilia, child pornography, and human trafficking, journalist and women's rights defender Lydia Cacho was arrested in December 2005. In her revealing book "Demons of Eden", Lydia described the relationship between the leader of the pedophilia network, powerful businessman Jean Succar Kuri, and various other businessmen, politicians, and civil servants.

In attempt to silence Lydia and enact revenge, José Kamel Nacif, a wealthy textile manufacturer based in Puebla and Succar Kuri's close friend, accused her of slander and defamation. On December 16, 2005, authorities arrested Lydia in her home in Cancun, Quintana Roo and transported her to the state of Puebla for prosecution. During the trip, police psychologically tortured Lydia by telling her that she would be raped and beaten in jail. Fortunately, Lydia avoided this fate thanks to the intervention of a female senator, and was released on bail after 30 hours. (For more information refer to the *Focus* issue 26).

#### A lengthy legal process

After a year of legal battles, Lydia Cacho is finally on the verge of receiving the justice she deserves. Early in 2006, a Puebla judge cleared Lydia of slander charges and transferred the case to Cancun. In October of 2006, Lydia was granted her petition to move the trial to the Federal District, where "Demons of Eden" was edited and distributed (*La Jornada*, 5 October 2006). Since the crime of defamation was recently repealed from the Federal District Criminal Code, Lydia expects to be exonerated of the charge by the beginning of 2007.

Mario Marín Torres, the priista governor of Puebla, is the highest public official currently under investigation by the Supreme Court (SCJN). Marín was

implicated in arranging the arrest and abuse in February of 2006 when a tape containing conversations between Kamel Nacif, Marín, and other public servants was leaked to the Mexican press. Opposition parties in Congress expressed their outrage, and requested the SCJN to create a commission to investigate the involvement of Marín and other civil servants in Lydia's arrest, which creation was approved by the SCJN on April 18. On September 19, the SCJN reviewed the evidence prepared by the special commission and voted to expand the investigation. The new commission will seek to determine whether Marín violated the constitutional principle of judicial independence and denied Lydia her right to an impartial judiciary. (*La Jornada*, 20 September 2006)

While the Supreme Court's decision was initially hailed as "good news in the fight against abuse of authority and impunity", the Court has not taken further action to expedite the investigation process (*La Jornada*, 20 September 2006). At the moment, the SCJN is still debating whether to include Marín's possible connection to Succar Kuri's pedophilia network in the scope of the investigation. The Court has also failed to appoint members to the new commission. Even more alarming than the SCJN's lack of urgency is Mario Marín's blatant effort to sway the Court in his favour. Soon after the SCJN voted to extend their investigation, Marín donated land to the Federal Judicial Power for the construction of new courts and tribunals in Puebla. Xavier Olea Peláez, Lydia Cacho's lawyer, has denounced the donation as "part of a political game to obtain a favorable resolution" (*La Jornada*, 14 December 2006).

Despite the effort of powerful businessmen and politicians to obstruct her work, Lydia continues to investigate Succar Kuri's pedophilia network, interview victims, and demand an end to the impunity of the powerful parties involved.

#### Conclusion

Thus, a year after Lydia was arrested on the basis of fabricated crimes and was psychologically abused, the parties responsible for her treatment have gone unpunished. While the SCJN has taken the initiative to investigate the corruption of the governor and judiciary of Puebla, it has failed to act in an expedient manner and may be susceptible to the influence of outside powers. Furthermore, even if the SCJN proves that Marín violated Lydia's human rights, Marín would still be immune to prosecution. The only body with the power to impeach Marín is the Puebla state legislature, which is controlled by the PRI and supports the governor. While under investigation by the UN Federal Bureau of Investigation (FBI), Jose Kamel Nacif has also managed to evade prosecution by Mexican officials. The failure to properly penalize Marín and Kamel Nacif demonstrates the formidable obstacles in the struggle faced by human rights victims to end the impunity supported by governmental institutions. The absence of punishment, in turn, serves to encourage further acts of journalistic repression and human rights violations.



Photo: Lydia Cacho during a forum at Casa Lamm, 2006. Archive Centre Prodh/TG

### The extinction of FEMOSPP

As explained in past issues of *Focus*, the Special Prosecutor's Office to Provide Attention to Events that Probably Constitute Federal Crimes Committed Directly or Indirectly by Public Servants Against Individuals Connected to Social and Political Movements of the Past (FEMOSPP) had been investigating the high-profile massacres against students in 1968 and 1970, the forced disappearance of 532 people and had carried out an investigation into so-called "dirty war" period in Mexico to produce the "Historical Report". But its work was already in a deep crisis by August 2006. This report was leaked, and most of FEMOSPP's accusations suffered serious setbacks (see *Focus* issue 26 August for further details).

As part of our defence work, the "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh) and other human rights organisations and networks published in October an assessment (available on our website) of our collective experience working with FEMOSPP in the investigation of 50 cases and filing about 300 claims. We concluded that while there were important developments in FEMOSPP's investigation on the massacres of students and activists carried out on October 2, 1968 (Tlatelolco massacre) and on June 10, 1971 (the *Halconazo* massacre), its investigation of 532 cases of forced disappearance and its report on the "dirty war" were deficient. There were no significant developments on the whereabouts of the disappeared, the historic report failed to involve the public during its drafting and to publicise it widely, and did not fully recognise the State's involvement in the crimes.

On October 23, the same organisations presented our findings before the Inter-American Commission on Human Rights (IACHR) during a thematic hearing. At the hearing Prosecutor Carrillo Prieto, now ex-head of FEMOSPP, attempted to justify these failures, alleging that he did not have the sufficient government support and that he doubted the continuation of FEMOSPP after the end of Fox's term. The Commissioners expressed their concern about the uncertainty on the FEMOSPP's future and the fact that many cases had been kept under military jurisdiction.

Uncertainty over FEMOSPP's status ended when on November 30 the now former Federal Attorney General, Daniel Cabeza de Vaca, issued an official notification announcing the closure of FEMOSPP. According to this notification all the cases that FEMOSPP had been investigating would be sent to the General Coordination of Investigations, part of the Federal Attorney General's Office. Our concern is that it is still unclear who will assume this incomplete work and it appears that there is no possible alternative at the national level.

#### Conclusion

Currently, following the closure of FEMOSPP, there is no clarity on what the current administration will do in relation to the human rights violations that occurred during the so-called "dirty war". This leaves the victims in a helpless situation, while the right to justice and truth are still pending and are likely to remain so for a long time.

### Permanent impunity: the Digna Ochoa case

This past October 19 marked the fifth anniversary of the death of our ex-colleague Digna Ochoa. Back in July of 2003, the Special Prosecutors Office concluded that Digna's death was a suicide. In response to political pressure, the case was reopened in February 2005 and Digna's body was exhumed in June 2005. Forensic experts hired by Digna's family performed an autopsy of the cadaver, which concluded that she had been beaten, dragged, and shot by an assailant (*La Jornada*, October 19, 2006). After the Prosecutor's Office rejected the forensic reports, Digna's family filed an official complaint with the District Judge, which was also rejected. Digna's family appealed this decision and eventually, in July of 2006, the Second Collegiate Tribunal ordered the Prosecutor office to admit their forensic reports as evidence in the investigation (*Cinacnoticias*, July 20, 2006). Mexico City's Attorney General's Office is currently reviewing the reports (*La Jornada*, October 20, 2006).

After five years, the investigation into the circumstances of Digna's death still continues, while those responsible enjoy impunity. Through their exhausting work and ceaseless determination, Digna's family has kept the case open, despite strong resistance from the Attorney General's Office. Unfortunately, Digna's death is one of many cases in Mexico in which human rights defenders have been abused without accountability.



## Glossary

**Communities in resistance:** Ethnic communities with a social and political structure that is based on their traditional customs, who peacefully oppose the hegemonic influence of the government, such as the Zapatista zones or indigenous zones that are under the control of the Army.

**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.

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

**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 *priista* government.

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



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