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The absence of a human rights agenda

During its first four months in office, the Calderón administration has pursued a policy that relies heavily on the Mexican Army and has taken advantage of opportunities to praise the military in public. At the beginning of the year, the Executive power financed a media campaign, primarily focused on television and radio, that highlights the actions of the military regarding security threats. Additionally, Calderón announced in December an increase of 24% in the public security budget, including a raise in the salary of the military. This increase contrasts with the 10 % cut in salaries of other federal public servants.

At the same time, the government has implemented aggressive actions related to public and national security. These actions include a series of police-military operations in various states, the recent renewal of the discussion within Congress to repeal the Law of Neutrality (which could potentially allow for the existence of foreign military bases in Mexico), the possible modification of the Constitution to include the term "international terrorism", and the continuing negotiation of the Security and Prosperity Partnership with the US and Canada to combat "extraterritorial threats" to the security and prosperity of North America.

Such exaltation of the military and actions regarding security matters

have been interpreted by various expert analysts as a tactic by the current administration to gain legitimacy before the Mexican public. Thus, rather than establishing a work plan to improve human rights conditions in Mexico, the Calderón administration has initiated policies that threaten the protection of human rights.

In the meantime, the so-called "legitimate government" led by Andrés Manuel López Obrador (AMLO) has also failed to develop a work plan with a human rights perspective. We have not found clear evidence that AMLO has followed up on his 50 commitments related to the matters addressed by this issue of *Focus*, such as the negotiation of a new agreement with the US and Canada on agriculture (commitment No. 19), the respect of the right to freedom of expression and human rights (commitment No. 33), and the strengthening of the Army while forbidding its use in social conflicts (commitment 35).

Consequently, it is evident that neither the current government nor the so-called "legitimate government" intends to deal with the many pending human rights issues. Therefore, it is imperative that the international community works together with the local civil society to demand the implementation of a human rights agenda in Mexico.

Calderón's Public Security Policy: A Threat to Human Rights

As explained in past issues of *Focus*, in recent years the Mexican government has increased military involvement in matters of public security partly in response to the proliferation of violence and corruption perpetuated by organised crime units and drug cartels. Since taking office in December of 2006, President Felipe Calderón has initiated a series of highly-publicised anti-narcotic operations, furthering the militarization of public security throughout the country. The "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh) is extremely concerned that these actions present a grave risk to human rights in Mexico.

Anti-narcotic operations

Due to its geographical location, Mexico has long served as an intermediary between drug production in Central and South America and drug consumption in the United States. According to the March 2007 Report by the US Bureau of International Narcotics and Law Enforcement Affairs, ninety percent of all cocaine in the US travels through Mexico. Mexico is the largest supplier of marijuana and a major supplier of heroin and methamphetamines. In recent years, the manufacturing and trafficking of most hard and soft drugs have remained steady, while methamphetamine production has increased. The report further states that levels of violence, corruption, and drug abuse in Mexico increased in 2006 as a result of the drug trade. Press reports indicate that there were between 2,000 and 2,500 drug-related murders in 2006; 500 in the state of Michoacán and 300 in Tijuana, a border city in Baja California.

In attempt to curb escalating violence throughout the country and to respond to the widespread public demand for improved security, President Calderón recently initiated a series of security operations involving the Army, the Marine Corps, the Air Force, state and federal police, the Federal Preventative Police (PFP), and the Federal Investigation Agency (AFI). Within two weeks of assuming the presidency, Calderón launched *Operación Conjunta Michoacán*, sending 4,260 soldiers, 246 land vehicles, and 46 planes to Michoacán in order to stop the flow of drugs and destroy illicit plantations. According to the Secretary of Public Security, Genaro García Luna, 1,400 military personnel were ordered to set up roadblocks, conduct random searches, and install points of control throughout the state (*La Jornada*, 12 December 2006).

Several weeks later on January 3, Calderón sent 2,600 soldiers and 110 federal police to Tijuana to close off trafficking routes and establish military control of the city. The military units disarmed all 2,320 city police officers, assuming the responsibility of policing the city in addition to pursuing networks of drug trafficking and organised crime (*New York Times*, 7 January 2007). For approximately one month, police and military forces patrolled the streets of the city in pickup trucks carrying armed soldiers, set up road blocks, and conducted random searches. Within the last several months, Calderón has initiated *Operativo Doble Muro* in Mexico City; *Operativo Sierra Madre* in Sinaloa, Durango, and Chihuahua; *Operativo Conjunto Nuevo León*; and

Operativo Conjunto Guerrero. The government is currently extending the anti-narcotic operations to other areas of the country, including the Chiapas, State of Mexico, Morelos, Nuevo León, Tabasco, Tamaulipas, Quintana Roo and Veracruz.

An ineffective strategy

The failure of past military operations to suppress organised crime and the recent wave of drug-related violence throughout the country demonstrates the limitations of such operations. During the Fox administration, elite anti-narcotics forces arrested dozens of drug cartel leaders. The arrests served to accelerate drug-related violence as rival gangs fought to gain control of the territory and trade routes made available by police operations (WOLA Special Report, November 2004). In June of 2005, Fox initiated *Operación México Seguro* and sent police and military units to Michoacán, Guerrero, and the northern border to quell drug violence. Despite Fox's aggressive anti-narcotic operations, the Public Security Commission of the House of Representatives reported that 9,000 drug-related executions occurred during Fox's six year term (Centre Prodh, Press Release SC/01, 18 January 2007).

In recent months, there has been a surge in drug-related violence, despite the on-going military operations. Since the beginning of the military operation in Tijuana at the start of 2007, there have been 11 kidnappings and more than 25 drug-related murders (*El Universal*, 12 March 2007). According to the president of the state's Citizen's Council for Public Security, the operation in Tijuana only produced results for a month; since February, serious crimes, such as kidnappings and executions, have resumed (*El Universal*, 8 March 2007).

Other states involved in the military operations have reported similar levels of violence. In Michoacán, there have been 40 murders related to organised crime this year. In February there were 72 drug-related murders in the three states involved in *Operación Sierra Madre* (Sinaloa, Durango, and Chihuahua). In Nuevo León, 42 people have been murdered this year. In Guerrero, the number of executions has reached 60. On March 12 and 13 alone, newspapers reported a total of 31 homicides in 48 hours, including two shoot-outs in Monterrey, Nuevo León.

On March 2, the total number of drug-related homicides reached 335; a reduction of only 6 deaths in comparison to the same date in 2006 (*El Universal*, March 2, 9, 14, 15, 27 and *La Jornada*, March 22, 2007).



Photo: Policemen supervising a demonstration. Archive Prodh/TG

Attacks against law enforcement personnel have also continued in an increasingly brazen manner. On the morning of February 6, less than two months after the start of *Operativo Guerrero*, a commander of *Los Zetas* (a specialised unit of the Gulf cartel with formal army training) entered the State Attorney General's Office in Acapulco and murdered seven personnel. On this occasion, as in other recent cases, the attackers left a message on the body of one of their victims challenging the power and authority of the federal government (*Proceso* No. 1580, 11 February 2007).

According to a member of the House Public Security Commission, a total of 70 federal, state, and municipal police have been assassinated this year (*La Jornada*, 25 March 2007). Drug cartels have also retaliated against high-ranking law enforcement personnel. On February 26, the Director of Public Security of the state of Sonora was murdered outside his office in Agua Prieta (*El Universal*, 27 February 2007). The Secretary of Public Security of Tabasco, Francisco Fernandez Solís, narrowly escaped an assassination attempt on March 6. Nine days later, a severed human head was left outside the police headquarters in Villahermosa, Tabasco (*New York Times*, 18 March 2007).

Threats to human rights

a) Militarised police operations

As expressed in past issues of *Focus*, we believe that the militarization of police operations poses a serious threat to human rights in Mexico. One source of human rights violations by military forces is their lack of proper training in civilian matters.

The PFP, one of the main militarised security forces in charge of the anti-narcotic operations, is also responsible for policing social protests, and has a history of human rights violations.

In response to civil unrest and protests in the cities of Guadalajara (2004), San Salvador Atenco (2006), and Oaxaca (2006), the PFP brutally repressed protesters through indiscriminate police brutality and other arbitrary acts. In each case, both male and female detainees reported the systematic use of sexual abuse and rape. In the case of San Salvador Atenco, only 21 low ranking officers out of the 3,500 PFP officers involved in the operation have been accused of abuse of power; one state police officer has been accused of libidinous acts and none have been sentenced (see *Focus* Issue 26, August 2006). Similarly, none of the PFP involved in the Oaxaca case have been sanctioned (see relevant *Newsbrief* in this issue of *Focus*). As Calderón continues to expand the presence of the PFP throughout the country, the Centre Prodh is increasingly concerned that PFP members will commit similar acts of abuse against the civilian population as demonstrated in the past.

A recent tragedy in Veracruz illustrates not only the danger posed by the indefinite presence of military bases in civilian communities, but also the willingness of Calderón to defend the Army against accusations of human rights violations. On the morning of February 25, Ernestina Ascensio Rosario, a 73 year-old indigenous Nahua lady, was allegedly raped by members of the military forces stationed in the indigenous community of Tetlalzinga, Soledad Atzompa municipality, Veracruz.

After being transferred to a local hospital, Ernestina died the following day. Before her death, Ernestina assured her family that she had been raped by members of the military. According to the regional Deputy Attorney General, Ernestina's first medical report reveal that she had a fractured cranium and ribs, lesions throughout her body, and lacerations around the rectum and vagina. Less than a month before the incident, the Soledad Atzompa Municipal Council sent a letter to President Calderón and the National Defence Secretary detailing other abuses by soldiers, including robberies, invasion of property, mistreatment of indigenous persons, and arbitrary vehicle searches (*Proceso* No. 1584, 11 March 2007).

The alleged rape of Ernestina has provoked outrage in local indigenous communities and at the national and international level (Amnesty International and the World Organization Against Torture both issued urgent communications on the case). Due

to alleged irregularities in the investigation, the National Commission on Human Rights (CNDH) ordered a second autopsy of Ernestina's body. While awaiting the results, Calderón stated during an interview that Ernestina died of chronic gastritis, denying the responsibility of the Army. Following the interview, the president of the CNDH, José Soberanes, backed Calderón's argument. We fear that such statements by the President and the CNDH may discourage the fulfilment of an unbiased and thorough investigation of the case.

b) The enhanced powers of the executive and the abuse of the "state of emergency"

Based on the threat of organised crime, the Calderón administration continues to impose increasingly restrictive and authoritarian measures, commonly used during "states of emergency".

Since taking office, Calderón has increased the power of the Executive branch, endangering the constitutional concepts of federalism and balance of power. He deployed federal troops throughout the country without the approval of state governments, which is required by law. In addition, the President made an executive decision to extradite 15 drug-lords to the US, failing to notify the respective judges or honour the judicial process. Furthermore, Calderón has negotiated important economic and security policies with the US and Canada, as part of the Security and Prosperity Partnership (see below), without consulting the legislative branch.

The government has also begun to limit judicial rights and constitutional guarantees in response to the public security threat of organised crime.

On January 17, the Supreme Court ruled that police can enter a home without a search warrant in cases of flagrancy in serious crimes, including rape, kidnapping, human trafficking, paedophilia, and possession of drugs and arms. Since many states allow police a 72-hour time period to pursue flagrant crimes, the Centre Prodh is concerned that the Court's ruling will facilitate violations of due process and judicial rights.

Additionally, the Secretary of Public Security, has ordered security forces to carry out at least 64 daily searches (two per state) (*La Jornada*, 14 February 2007) to arguably show results.

The intense pressure placed on police to produce quantitative results further jeopardizes the already vulnerable state of judicial rights in Mexico. In an effort to further expand the government's policing capabilities, President Calderón sent a judicial/ public security reform bill to Congress on March 9. The bill seeks to allow the Attorney General to carry out detentions, searches, phone taps, and home entries without a court order (*La Jornada*, 15 March 2007). Various senators of opposition political parties have expressed fierce disapproval of the President's proposal. According to a senator of the PRI party, the reform intends to "create a special legal regime for organised crime, granting extraordinary powers to the Attorney General, Public Prosecutors Office, and the police, which serves as a detriment to the individual guarantees..." (*Proceso Online*, 23 March 2007).

c) The Security and Prosperity Partnership of North America

Through the Security and Prosperity Partnership of North America (SPP), an agreement between the Executive branches of the United States, Canada and Mexico on economic and security issues (see glossary for further details), the United States has placed increasing pressure on the Mexican government to crack down on organised crime and further militarise public security operations. The SPP has been widely criticised in each country since it was negotiated by the Executive branch and private corporations without the approval of legislative bodies.

The security policy established by the SPP is directed towards deterring "transnational threats" in North America, including terrorism, organised crime, and the trafficking of humans and contraband. Following the terrorist attacks of September 11, the US began to expand its national security sphere and exerted increasing pressure on its neighbours to comply with heightened security measures. In October of 2002, the US Department of Defence created the Northern and defeat threats and aggression aimed at the United States" using "air, land and sea approaches" in the US, Canada, Mexico (see www.northcom.mil/). The security measures outlined in the SPP, including increased border security, information sharing, and military support, are, similar to other measures implemented after 9/11. Since the US government equates the threat of terrorism with organised crime and drug trafficking, it has placed increasing pressure on Mexico to intensify and

militarise its internal security operations. Based on the SPP, President Bush recently pledged \$50 million to the Mexican Army for technical assistance, technology, and intelligence programs (*Proceso* No. 1584, 11 March 2007). Furthermore, the DEA and FBI will train special groups of Mexican security forces on military intelligence and scientific investigation (*La Jornada*, 5 March 2007). Since undocumented migrants can be also considered as “transnational threat” by the SPP, many Central American migrants travelling through Mexico en route to the US are vulnerable to further human rights abuses as a result of increasingly aggressive

border security measures. Migrants are already treated like criminals, and detainees are often held in over-crowded detention centres or prisons without proper medical care.

Conclusion

In response to pressure by both the US government and Mexican public to suppress increasing levels of drug-related violence, President Calderón has dedicated his first four months in office to fighting organised crime through highly-publicised, militarised operations. The recent wave of violence throughout the country, however,

demonstrates the failure of military operations to produce lasting results. Calderón’s measures to combat organised crime are not only ineffective, but they also present a serious threat to human rights. The history of human rights abuses by soldiers and PFP officers reveals the danger of bestowing military bodies with the responsibility of policing a civilian population. Therefore, the current policies of the Calderón government on public security represent a threat to the fulfilment and protection of human rights in Mexico, and it is imperative that we work together to stop their further deterioration.

Forecasted food crisis: the rising price of corn in Mexico

In January 2007, there was a sudden increase in the price of many products that form the basis of the Mexican diet. The disproportionate increase in corn *tortilla* (see glossary) prices was the most significant.

This situation has the potential to become a severe crisis affecting the poorest sectors of Mexican society as of 2008 when protectionist measures will be lifted as stipulated in the North American Free Trade Agreement (NAFTA).

Corn is the staple food of most Mexicans’ diet, especially within sectors of limited resources. According to a study by *Archivos Latinoamericanos de Nutrición*, “the *tortilla* is the main source of food energy, calcium, and fibre for 45% of the population of low social classes” in Mexico City and its metropolitan area.

Furthermore, the price of the *tortilla* constitutes 45% of family expenses for the most impoverished sectors covered in this study. (ALAN, *El subsidio a la tortilla en México: ¿un programa nutricional o económico?*, 2003, Vol. 53, Num. 1). The economic crisis that is reflected in the increase in corn prices, and, consequently, in *tortilla* prices, occurred in the final year of tariff protections for corn, beans, milk and sugar cane as established by NAFTA.

As of 2008, trade barriers will be lifted according to the agreement and the world market will regulate the price of the products. (SAGARPA, *TLCAN: Se reúnen secretarios de Agricultura de México y EUA*, press release, March 6, 2007).

Excessive increase in *tortilla* prices

In January, *tortilla* prices rose by more than 40%; from an average of \$6 pesos per kg. (approximately US\$0.55 cents) to \$10.50 pesos per kg. (approximately US\$1 dollar) in most parts of the country. In some regions, *tortilla* prices reached \$18 pesos per kg. This dramatic increase is highly disproportionate in comparison to the 4% increase in the minimum wage. Following the implementation of various government measures to stabilise the *tortilla* price in some regions of the country, the average price is now around \$8.50 pesos per kg.

Since the *tortilla* represents the core element of the poor’s diet, the surge in prices directly affects their budget. According to a study conducted by the House of Representatives, the poorest sectors of the population had a monthly income of \$906 pesos (approximately US\$83 dollars) in 2006. This sector of the population consumed 10.9 kilograms of *tortilla* per month, which represents expenses of \$65.4 pesos (approximately US\$5.5 dollars). Therefore, in the poorest regions of Mexico, 7.2% of the income is dedicated to the purchase of *tortillas*.

Consequently, if *tortilla* prices are maintained at an average of \$8.50 pesos and consumption at 10.9 kg, households will spend \$92.40 pesos (approximately US\$ 9 dollars) per month. The poorest classes will then devote 9.8% of their income to the purchase of *tortillas*. This represents an increase in concrete terms of 41.6%, significantly greater than the

increase in the minimum wage. (Cámara de Diputados, *El impacto en los hogares del país del incremento en el precio de la tortilla*, January 2007)

While the *tortilla* is not the only food product that suffered an inflationary rise in prices in 2007, it has undergone the more dramatic cost increase and has had the most significant effects on the population.

Dissimilar positions

Two different causes for the excessive increase in *tortilla* prices have been identified. First, the Secretary of Finance, Eduardo Sojo, blames corn inflation to the need of having to import white corn to fulfil the national demand and to the effect of international corn prices on national prices. According to Mr. Sojo, the surge in *tortilla* cost is due to the increasing international demand for grains, including corn, for the production of biofuels as a result of increased oil prices. The recent energy policies of countries, such as the United States, has spurred a greater demand for corn and other biocombustible products, generating an international phenomenon of price increases. Consequently, the rise in prices at the international level has directly impacted the chain of corn in Mexico, among others. (RMALC issue No. 9, 2007) In contrast, civil organisations and the agricultural sector argue that the rise in *tortilla* prices is a result of the monopolistic practices of national and international companies, such as MASECA, Minsa, Cargill, Bimbo, and the National Corn Growers, which have the

concessions to import, distribute, and sell corn for human consumption in Mexico. The first three companies import the highest amount of corn and control the distribution and sale of *nixtamal* flour (see glossary), a necessary ingredient in the production of *tortillas*. According to this view, there is no need to import corn in order to fulfil the national demand. (Greenpeace, Press Release 0701, January 12, 2007). Supporters of this perspective accuse the corporations of speculation and monopolization of white corn reserves in the country, which has thus contributed to the increase in *tortilla* prices (*Proceso*, 1577, January 21 and RMACL op. cit.).

Ineffective governmental action

In response to the increasing discontent of the public and various political groups, on January 11, the government announced a program of six measures to control the *tortilla* price. These measures allegedly sought to improve the flow of information among major financial actors in order to prevent speculation; to implement mechanisms to assure the supply of the national market; crack down on middlemen in order to stimulate direct commerce between producers and *nixtamaleros* (see glossary); and to reduce production costs. One of the most controversial measures also put forward was to authorise, one year in advance, the importation of white corn without trade barriers, a measure that had originally been planned to be enacted in 2008, as agreed in NAFTA.

According to the government, the anticipated importation would force the decrease in *tortilla* prices following a rise of the supply of the product. We believe, however, that this policy does not guarantee a decrease in cost since the same companies accused of monopolistic practices also hold concessions to import the additional corn. These measures announced by the Secretaries of Finance and of Agriculture have failed to stop the speculation in *tortilla* price. However, on January 18, in an official statement, President Felipe Calderón signed the Agreement to Stabilise the *Tortilla* Prices (*Acuerdo para Estabilizar el Precio de la Tortilla*), renewable as of April 30th, along with his Secretaries, the National Association of Self Service Stores and Departments (*Asociación Nacional de Tiendas de Autoservicio y Departamentales*, ANTAD), various *tortillerías* (see glossary), and other merchants. The agreement contains 13

measures to lower *tortilla* prices, including the measures previously mentioned.

The principal objective is to maintain a lower price of *nixtamal* and its sale in DICONSA stores (see glossary) in order to “aid the poorest sectors”. This agreement fixes *tortilla* price at an average of \$8.50 (US\$0.80) for the companies cited, while forcing DICONSA stores to sell a kilo of *tortillas* at \$3.50 (US\$0.30). The result of this agreement has been incomplete. According to data of the Mexican Agency for Consumer Protection (PROFECO), ANTAD stores maintained *tortilla* prices at approximately \$5.80 pesos (US\$0.50 cents) during the month of March. However, the PROFECO has identified *tortillerías* that sell a kg. of *tortillas* at a cost of up to \$12.50 pesos (US\$11 dollars). The agreement is further restricted since only a limited number of actors signed the document and it has not reached a full national coverage. On January 23, only 11 out of 32 states had accepted the agreement (*La Jornada*, January 23, 2007).

From a human rights perspective

The measures taken by the federal government constitute a temporary remedy that fails to improve the living conditions of the poor. The stabilizing pact does not represent an improvement for the majority of the 90 millions of Mexicans who will see their cost of living increase.

The federal government is pursuing a purely economic approach that prioritizes the needs of transnational corporations arguably to make the country more competitive. This policy, however, places the poorest sectors of the population in a situation of extreme vulnerability and jeopardizes the fulfilment of their economic, social and cultural rights, specially the right to food and health.

The UN Special Rapporteur on the Right to Food has stated that the right to food in the era of globalization involves the obligation of governments to protect it. States, thus, have the responsibility to “pass and enforce laws to prevent powerful people or organizations from violating the right to food. The obligation to protect requires States to regulate non-state actors, including corporations or individuals who may threaten other people's right to food.” (UN, E/CN.4/2006/44, March 16th 2006, par. 23). Once the trade barriers on corn imports as established by NAFTA are lifted, the economic situation of millions of peasants may worsen. As the

Rapporteur mentions, the subsidy of agricultural import products “...will have a negative impact on the right to food of people living in [developing] countries since their livelihoods will be destroyed and they will not be able to purchase food[...] In Mexico, for example, it is estimated that up to 15 million Mexican farmers and their families, many from indigenous communities, may lose their livelihoods as a result of the North American Free Trade Agreement and competition with subsidized United States maize” (idem par. 35).

Conclusions

In our opinion, the measures implemented by the Mexican government fail to guarantee and protect the right to food of the poorest sectors of society. Moreover, the authorities have not addressed the core problem regarding the corn industry in Mexico. In the near future, this staple product will be controlled by private corporations with little regulation who are able to import US subsidised corn in massive quantities. This situation will directly affect the *tortilla* consumers, and Mexican peasants will suffer the most.

The failure of the Mexican government to guarantee the right to a decent life in which economic, social and cultural rights are protected requires a new balance between public interests and market rules. In order to do so, the government must comply with its international obligations established in numerous human rights agreements. The authorities must also implement measures that address the root causes of problems that lead to such crisis.



Photo: Demonstration against the raise of *tortilla* prices. Archive Prodh/TG.

One Year After the Explosion in Mine 8 *Pasta de Conchos*

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Background

On February 19, 2006, there was a powerful explosion in mine 8 *Pasta de Conchos* mines, located in the municipality of San Juan Sabinas in the northern state of Coahuila. The Mexican mining company *Grupo México S.A.* and its subsidiary *Industrial Minera México S.A.* currently have government authorisation to exploit the mine for coal.

The accident resulted in the injury of seven miners and the death of 65. More than a year after the explosion, the bodies of 63 miners remain buried in the mine. This tragedy was the result of mistakes and omission of the part of three different parties involved: the company that runs the mine, federal and state authorities, and the members of the miners union who are in charge of supervising the company's actions.

The deaths of the miners remain impune. The judicial proceedings against five representatives of the company were recently suspended in an irregular manner. Impunity also continues in the cases of neglect by officials of various government bodies.

Hazardous work conditions

The safety standards of working conditions were seriously affected during the presidential term of Ernesto Zedillo, who deregulated private companies in order to generate favourable conditions for

investment and eliminated a series of regulations by the Federal Regulation of Security, Hygiene, and Work Environment that protected workers. This policy of deregulation was intensified by Fox's government. For approximately a year and a half before the explosion, an inspection carried out in July of 2004 by the Federal Employment Delegation (STPS), an office of the Secretary of Employment and Social Precaution in charge of carrying out periodic inspection of the security and health conditions of mines in the state, had already revealed that the mine did not comply with basic security standards.

The results of the inspection, which were issued a year later, exposed serious ventilation problems in the mine. Ten days before the explosion, the workers complained that the mine was very "gaseous" (when the concentration of methane gas is greater than .5%). The only ventilation tunnel was located 2 kilometres away from the bottom of the mine where the majority of miners worked, thus, making it difficult to control gas levels. The structure of the mine also lacked the proper supports to prevent a collapse. In addition, workers reported that other security measures had not been installed, such as fire extinguishers and a hydration network.

The Federal Employment Delegation issued 34 measures that were to be implemented to rectify the hazardous conditions of the mine. After the company responded to these recommendations in February of 2007, the Delegation carried out another inspection to verify the fulfilment of the safety measures and found everything to be in order. The death of the 65 miners, however, contradicts the Delegation's findings.

Mining industry data

With deregulation and cost reductions in security measures, it is not surprising that the mining industry has expanded its earnings in recent years. In 2005, the value of Mexican mining-metallurgy production reached a record of more than 53 billion pesos (approximately five billion dollars), an increase of 26% from 2004 (*Cámara Minera de México, Situación de la Minería Mexicana* 2005, p.6).

According to the STSP, mining has the highest level of risk out of 121 economic activities. A total of 14,917 miners work for 364 employers (*Reforma*, March 7, 2006).

Tri-party responsibility

The accident in mine 8 *Pasta de Conchos* was the consequence of a series of mistakes and omissions on the part of three parties: the company *Grupo México, S.A.*, the government, and the miners union.

The company *Grupo México, S.A.* is directly responsible since it failed to guarantee safe working conditions in the mine. Since the tragedy in 2006, the company has continued to violate the labour rights of its workers. In January of 2007, the company fired a large number of its unionised workers and hired workers, through the company *Industrial Minera Agujita*, who were more willing to work overtime. *Grupo México* then rehired 180 of the workers who had been fired, but took away some of their worker rights, among them, their right to a retirement pension (*Excelsior*, January 16, 2007).

On the part of the government, the officials in charge of supervising the actions of the company were negligent since they failed to effectively supervise the labour conditions of the mine. On July 17, 2006, the National Commission of Human Rights (CNDH) issued the recommendation 26/2006, in which it declared that public servants of the STPS, "...working for the Federal Employment Delegation in the state of Coahuila, violated the fundamental rights of legality and legal security in respect to the right of physical integrity and life...". The STPS neglected to carry out strict supervisions regarding the safety of the working conditions in the mine.

In addition, the Ministry of the Economy, which is in charge of cancelling licenses when "workers' life and physical integrity are threaten" (Mining Law, art. 43), has been reluctant to accept its responsibility, arguing that the STPS is charge of monitoring and verifying the fulfilment of security standards regarding mining activities.



Photo: Graffiti reads: Decent Treatment.
Archive CEREAL



Photo: Graffiti reads: Decent employment. Labour Justice. Archive CEREAL.

The Ministry has also neglected its obligation to coordinate with the STPS in the verification of the implementation of safety regulations. (STPS, Internal Rules, art. 12)

The Mexican Social Security Institute (IMSS), in accordance with the Social Security Law, has the power to visit enterprises to ensure the complete fulfilment of their legal obligations. Moreover, the IMSS is obliged to put in place and supervise programs that promote and support the implementation of measures to prevent work risks in companies. In the case of the *Pasta de Conchos* mine, however, the IMSS has not undertaken any of these measures.

Finally, the miners union must also recognise its own responsibility in the tragedy, particularly at the level of the General Secretariat. The union was not emphatic enough to condemn the lack of worker protection, which was reflected in the fact that the union leaders failed to release an official statement following the tragedy.

In order to provide further information on the recent politics of the miners union, it is important to mention the recent allegations that accuse the ex-President Vicente Fox of personally encouraged the dismissal of Napoleón Gómez Urrutia, the leader of the Union of Miners, Metallurgic Workers, and Workers of Related Areas of Mexico (SNTMMSRM).

Due to political reasons, the STPS presumably intervened in the internal life of the union in February 2006, stripping Gómez Urrutia of his leadership position and replacing him with Elías Morales. Gómez Urrutia recently obtained a writ of habeas corpus which orders his restitution as the leader of the SNTMMSRM (*El Universal*, April 11, 2007). However, Gómez Urrutia still faces 7 accusations brought against him by the federal government in February 2007 for the embezzlement of a \$55 million dollar trust.

Thus, the death of 65 miners in *Pasta de Conchos* must be viewed within the context of the Fox administration, which pursued policies of increasing production at the cost of reducing personnel, deregulating security standards to attract investment, reducing the cost of production, and violating the right to freedom of assembly. The tragedy also illustrates the implementation of policies that encourage a culture of corruption and negligence among various government agencies.

Human rights violations

In the case of *Pasta de Conchos*, various parties are responsible for violating human rights. According to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to a decent life, the right to health, including safe working conditions, and the right to fair and satisfactory working conditions

have been transgressed. (arts. 6, 11, 12 and others). The freedom of religion and beliefs of the widows has also been violated, since they do not have access to the remains of their loved ones (Constitutional article 24 and article 12.1 of the American Convention on Human Rights). In relation to the right to reparation, manslaughter charges were brought against five representatives of the mining company in March 2007. On April 13th, however, the legal procedures were suspended after the company offered an insignificant compensation of \$11,830,000 pesos to the families of the victims (*Milenio*, April 18, 2007).

This compensation procedure was irregular since the labour authorities are responsible for handling reparation matters. Labour authority, however, failed to act on the matter due to pending administrative procedures, such as the delivery of death certificates which many widows rejected until the retrieval of their husbands' bodies. Thus, the victims' right to justice was also severely compromised. Moreover, the absence of a fair compensation violates article 2(3) of the International Covenant on Civil and Political Rights (PIDCP) and the principles of Joinet (ONU E/CN.4/Sub.2/1997/20/Rev.1, October 2, 1997).

Conclusions

The administration of Felipe Calderón faces many challenges regarding the case of *Pasta de Conchos*. The President will have to assure the justiciability of the rights that have been violated and the penal and administrative sanction of the different authorities involved.

We can conclude that, notwithstanding the recommendations of the CNDH, the investigation into the causes of the explosion has not progressed and the sanction of the responsible public officials remains to be seen.

Moreover, it is necessary to investigate and sanction the labour practices of *Grupo México*. Furthermore, the responsibility of the STPS, the Financial Secretary, and the IMSS must also be determined.

As a result, the tragedy at *Pasta de Conchos* reflects the impact of deregulation policies that have been implemented by private companies in accordance with the neoliberal policies adopted by the Mexican government in the last 20 years. This case also reflects the decline in labour rights.

Increasing Danger in the Exercise of Freedom of Expression

In past issues of *Focus*, the Human Rights Centre “Miguel Agustín Pro Juárez” (Centre Prodh) has discussed the constant risks faced by journalists in the exercise of their freedom of expression under the previous government (see *Focus* issues, Spring 2005 and Spring 2004). Four months after the current administration took office, there is little hope of improvement.

At the end of 2006, the International Federation of Journalists (IFJ) issued a report in which Mexico was classified as the most dangerous country of Latin America to exercise the profession of journalism. To support their statement, the IFJ indicated that 10 journalists were murdered in 2006. In other countries considered to be more violent such as Colombia, five cases had been documented.

Other international organisations have also issued reports on the matter. The Research Commission on Attacks against Journalists (*Comisión Investigadora de Atentados a Periodistas, CIAP*) part of the Latin American Journalists Federation (*Federación Latinoamericana de Periodistas, FELAP*) reiterated on March 8 the data released by the IFJ. In November Reporters Without Borders reported that Mexico was the second most dangerous country in the world for journalists just after Iraq (*El Universal*, November 23, 2006). Furthermore, the Inter-American Commission on Human Rights (in January 2007) and the Inter-American Press Society (in March 2007) reported the death of six journalists and the disappearance of two in the previous six months.

The majority of these organisations identified the victims of these attacks as investigative reporters.

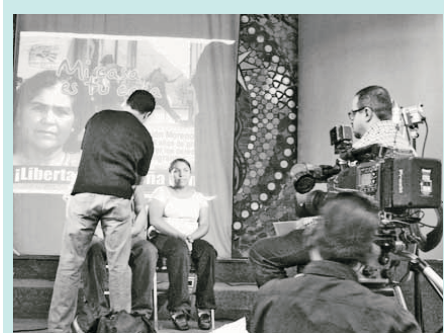


Photo: Journalists during the presentation of the case of Concepción Moreno's case. Archive Prodh/TG.

In relation to the information issued by representatives of the Mexican government, the National Commission on Human Rights (CNDH) confirmed the information put forth by the IFJ on January 5. The Commission also stated that during the Fox administration, 27 journalists were executed and 4 were victims of forced disappearances. Other non-official sources, however, have stated a higher incidence of 30 murders and 5 disappearances (*La Jornada*, January 5, 2007). The president of the special commission of the House of Representatives on the matter, Gerardo Priego Tapia, indicated that drug trafficking and local political leaders constitute the principal source of insecurity for journalists (*El Universal*, January 5, 2007).

Background information

In June 2005, Centre Prodh presented a report on aggression against journalists. The report had already documented an alarming tendency of serious and systematic violations of freedom of expression. It reported attacks against 27 journalists of various types: homicides, forced disappearance, kidnappings, threats, and physical aggressions.

In the report, we emphasised that although individuals carried out most of the attacks, the government failed to guarantee freedom of expression and protect journalists' right to inform the public without undermining their own safety. The rights most violated were the right to life, to justice, to personal and/or community integrity, to freedom, to personal security, to a private life, to information and to free expression (see *Focus* issue Spring 2005 for further details).

Positive and negative developments

Following the public release of reports on violence against journalists, certain developments that we consider positive for the exercise of free speech have occurred. The Senate approved the decriminalisation at the federal level of the crimes of slander, defamation, and calumny on March 6, 2007. As a result these crimes will no longer be penalised by jail time at the federal level. The decriminalisation will benefit members of the press who face lawsuits for crimes of this nature, such as Lydia Cacho who was exonerated from the accusation of defamation on February 14, 2007 after her

trial was moved to Mexico City (see relevant Newsbrief in this issue of *Focus* and past issues for further details), because the crime of defamation was repealed from the criminal code in Mexico City in August of 2006.

Despite the decriminalisation of slander, defamation, and calumny at the federal level, these crimes remain valid in various states. The LVI legislature of the state of Puebla (where the governor allegedly conspired with officials of the judicial systems to accuse Lydia Cacho) just approved the penalisation of calumny on the March 14.

Another negative development is the harassment experienced by diverse journalists who criticise the state and federal government. Federal and various state governments have retaliated against the press for criticising their administration, for example in Aguascalientes where the governor cancelled a radio program (*La Jornada*, March 24, 2007).

Special Prosecutor's Office for the Attention to Crimes Against Journalists (FEADP), created in February of 2006, has produced minimal results. According to official information on the 108 cases that were allocated to the FEADP, 19 cases were voluntarily dismissed by the victims' families and only one case went to trial (FEADP, press bulletin 1524/06, November 29, 2006). After the Special Prosecutor left office on February 1 of this year, a period of inactivity began, generating speculations about the possible intention by the federal government to close the FEADP. On March 14, 2007, a new Special Prosecutor was appointed with the limited responsibility of only 21 cases. The rest of the cases have been reappointed to the jurisdiction of the Attorney General's Office for the Specialised Investigation of Organised Crime (SIEDO).

The SIEDO has failed to produce effective and prompt investigations in the past. One example of such deficiencies is the case of Alfredo Jiménez Mota, who disappeared on April 2, 2005. It is believed that Alfredo was executed to prevent the publication of a report in his possession that linked municipal and state authorities, including the brother of the governor, with the Beltrán Leyva cartel. Before his disappearance,

the directors of *El Imparcial*, the newspaper where Alfredo worked, had sent Alfredo's findings to the SIEDO.

The SIEDO immediately discredited the findings, and has not taken them into account in the current investigation of the journalist's disappearance (*Proceso* #1577, 21 January 2007; #1589, 15 April 2007; *Zeta* 17 February 2007).

Recent attacks

The case of Rodolfo Rincón Taracena, who "disappeared" on January 20, 2007, is the first case of violence against journalists during the current administration. His disappearance is apparently related to a series of reports he produced regarding drug trafficking and the corruption of local authorities in Tabasco. The case is being handled by the state Attorney General's Office, which is involved in the investigations and has been accused of harassing and making accusations against the Rodolfo's colleagues during the investigation (*Tabasco Hoy*, February 20, 2007).

The most recent case of attacks against journalists occurred on April 6, 2007 when Amado Ramírez, a correspondent for the television chain *Televisa* in Acapulco, was shot and killed as he left the building of

his radio program. The next day, his colleague on the program and correspondent for the newspaper *La Jornada*, Misael Habana, received death threats (AI AU, AMR 41/033/2007, 13 April 2007). Apparently, this case is also related to drug trafficking. Finally, it is important to mention the kidnapping of the director of the newspaper *Interdiario*, which occurred on Monday, April 16 in the state of Sonora. His body was found in the state of Chihuahua a week later. In addition, on the night of April 17, a grenade exploded in the offices of the newspaper *Cambio Sonora*, which is also located in the state of Sonora.

The cases demonstrate the increasing incidence of attacks against journalists and the impunity of such attacks.

Conclusion

The past administration failed to ensure and protect the right to liberty of expression, as demonstrated by the reports of national and international human rights bodies. With little interest, the present government has initiated investigations into the attacks against journalists that occurred during the Fox government. While there have been some advances with the decriminalisation of the crime of

opinion at the federal level, it is certain that the vulnerability of journalists will continue to increase unless the distinct authorities of the government assume the responsibility to guarantee the safety of the public in general and journalists in particular.

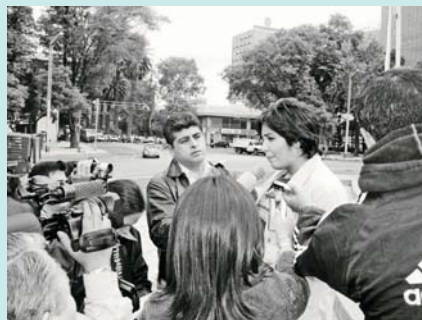


Photo: Isabel Uriarte (Centre Prodh) and members of the press. Archive Prodh/QF.



The Supreme Court: Hesitant on Cases of Human Rights

At the start of his term, the Chief Justice of the Supreme Court (SCJN), Guillermo Ortiz Mayagoitia, defined ten challenges on its agenda, including "the protection of human rights and the fundamental rights established by the Constitution" (SCJN, 2 January 2007, press release).

The SCJN appears to have taken on this challenge since it has recently accepted cases or situations closely linked to human rights issues, such as the case of Lydia Cacho, the human rights violations committed in San Salvador Atenco, the theme of HIV-AIDS, and the hierarchy of international treaties. It is possible that the Supreme Court will also assume an investigation of the human rights violations that occurred in Oaxaca in 2006.

There is no doubt that the SCJN has recently become increasingly involved in themes relating to human rights. Nevertheless, recent debates and decisions of the SCJN illustrate that members of the

Court sometimes have handled human rights violations in accordance with international standards and other times, however, they have also revealed technical ignorance and a lack of understanding regarding some of the topics of discussion.

The case of Lydia Cacho



Photo: FPDT demonstrators outside the SCJN premises. Archive Prodh/QF.

On January 25, the SCJN voted unanimously to expand the investigation initiated on April 18, 2006 (based on the Court's investigatory faculty specified in art. 97, 2nd par. of the Constitution) to include the possible involvement of the Puebla authorities in human rights violations against Lydia Cacho.

In addition, the Court stated that if they encounter evidence of the other serious human rights violations, such as the authorities' involvement in a pedophilia network, the Commission will have the power to further investigate these matters (SCJN, stenographic version of sessions pp. 35-98, January 25, 2006).

Human rights violations in San Salvador Atenco

On February 6, the SCJN debated whether or not to exercise their faculty of investigation regarding the cases of human rights abuse committed by security forces

during the repression of protesters in the town of San Salvador Atenco on May 3 and 4, 2006 (Art. 97 2nd par.), as done in the Lydia Cacho case.

During the discussion, the Justice Aguirre Anguiano presented the case and stated that the SCJN should abstain from using their faculty of investigation. Aguirre argued that the responsible authorities acted within the boundaries of their capabilities and in response to the disturbance of public order; that the human rights violations committed are already under investigation by other entities; that social stability has been reestablished in San Salvador Atenco; and, finally, that intervention by the SCJN could exacerbate tensions among the citizens of San Salvador Atenco.

Fortunately, seven of the eleven Justices voted against Aguirre's proposal. The SCJN decided to create an investigatory commission, comprised of two federal magistrates who initiated their activities on February 21. The commission will not seek to determine if there were, in fact, human rights violations since this matter has already been clearly proven. Rather, the objective of the commission is to investigate the reasons behind the violations, who gave the orders, whether the events followed a strategy of the State, and whether the situation was overtaken by the violence of the events or the lack of training of the police force (SCJN, stenographic version pp.3-42 and press release, 19 February 2007).

The "Miguel Agustín Pro Juárez" Human Rights Centre (Centre Prodh) took part in a consulting process carried out by the investigatory commission in April, in which we presented our documentation on human rights violations. At the present time, the SCJN has not released a date of presentation of their findings.

Discrimination against soldiers infected with HIV-AIDS

On February 28, following ten days of debate, the SCJN resolved four petitions for the writ of habeas corpus against various articles of the Law of the Social Security Institute for the Mexican Armed Force (LISSFAM). The petitions were filed by members of the Mexican Army who had been relieved of their services after testing HIV-positive and forcibly discharged from the Army based on article 226 (second category par. 45) that justifies removal for uselessness.

During the debates, it was clear that the knowledge of the Justices regarding the theme was unequal and, in some cases, non-existent. While some of the justices viewed the petitions from a human rights perspective, others insisted on handling the cases from a procedural point of view. These justices rejected the petitions based on the defense of public interest, erroneously assuming that HIV-positive persons serve as instruments to spread the disease and questioning their capacity to work.

When defending a similar case, the Centre Prodh has argued that removal based on HIV status violates the Constitutional guarantees of equality and non-discrimination, the right to health, and the right to stable employment (Centre Prodh, press release SJ/04, February 21, 2007).

Ultimately, the Justices ruled that the discharges were unconstitutional since they violated the principles of equality and non-discrimination. The Justices Sergio Aguirre Anguiano, Genaro Góngora Pimentel y Mariano Azuela Güitrón voted against admitting the petitions.

The SCJN failed, however, to establish jurisprudence on the matter since the fifth petition filed by an HIV-positive soldier was rejected; therefore, the minimum of five similar rulings required in order to establish jurisprudence was not achieved. As a result, the decision of the Court lacks *erga omnes* and the ruling is only applicable to the plaintiffs rather than the military in general.

The hierarchy of international treaties

On February 13, the SCJN debated an action of constitutionality of 14 petitions for the writ of habeas corpus presented by various mercantile companies regarding the North American Trade Agreement and an agreement endorsed by the World Trade Organization. From a human rights perspective, the most relevant aspect of the debates dealt with the hierarchy of international treaties in relation to the Constitution and federal and state legislation.

In a closed vote of six votes to five, the SCJN ruled that international treaties take precedence over federal and state legislation, but have an inferior status to the Constitution. Thus, if a national law were contrary to an international treaty, it would be declared unconstitutional for violating article 133 of the Constitution

(SCJN, stenographic version pp 1-58 and press release, 13 February 2007). Such a declaration, however, is just one opinion. Since the Court failed to reach the minimum of eight votes required to establish jurisprudence on the matter, other legal bodies are not bound to adhere to the Court's ruling.

Conclusions

The Supreme Court Justices have demonstrated diverse levels of willingness to handle cases linked to human rights from a humanist perspective and with the consideration of international treaties and conventions. It is also evident that various members of the Court lack sufficient technical and legal knowledge to support their arguments, as illustrated in the cases related to HIV-AIDS or that many of them hold disconcerting positions regarding the hierarchy of international treaties.

While the Supreme Court does appear to be increasingly willing to take on cases related to human rights violations, such as the cases of Atenco, Lydia Cacho, and, perhaps, Oaxaca, they still lack the consistent action required in order to confront the challenge set forth by the Chief Justice: to be a constitutional body that protects human rights.

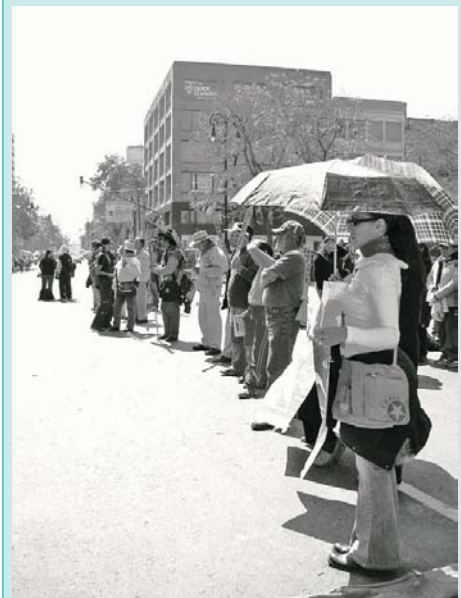


Photo: Demonstrators outside SCJN's facilities. Archive Centre Prodh/QF.

The Law on State Reform: a huge challenge

The Law on State Reform was approved by Congress on March 29. This law establishes the mechanisms and methodology that will regulate the State reform process regarding the five main aspects of the political-legal national apparatus: the State regime and government, democracy and the electoral system, federalism, reform of the judicial power, and social guarantees. This in order to rectify the structural problems of the Mexican political regime.

An Executive Commission will be created and endowed with the task of coordinating the reform process of the Mexican state. This Commission will comprise the directive boards of the House of Representatives and the Senate, the coordinators of each political party of each house of Congress, and the presidents of the Commission on State Reform of both houses. A representative of the Executive power will also participate (without the voting privileges), and a member of the Judicial power will participate in matter of judicial reform (art. 3). According to article 9, the process will have five stages: presentation of proposals, public consultation, negotiation and consensus, project drafting and validation, and final proposals. The law will be valid for 12 months starting on April 13, 2007, the official date of publication in the *Diario Oficial de la Federación* (according to the seventh transitory article).

The current political context demonstrates that the issue of electoral reform is of primary interest to the political parties. Centre Prodh is mainly concerned with judicial reform and social guarantees, which we believe have stronger links to human rights topics. At the moment, however, we do not know what shape or orientation the discussions will take on this matter.

Conclusions

The Law on State Reform has been adopted in a very wide sense and we doubt that the Commission will be able to propose concrete and effective measures regarding all of the issues put forth in the law within a year. Additionally, we believe that the discussion process established by the law is insufficient since civil society may only have the opportunity to participate in the consultation once the proposals have been made by the Commission. We are further concerned that the State Reform project will be a top-down proposal that will only serve the interests of the political elite. In any case, the Centre Prodh will closely follow any developments on human rights matters.

Impunity in Oaxaca

Since the massive security operation carried out against protesters on November 25, 2006 and the arrest of the APPO leaders, the APPO movement has weakened. On January 23, Calderon ordered the retreat of PFP forces from the city of Oaxaca. Despite the relative calm, there have been numerous reports of harassment by police forces and supporters of Governor Ruiz against APPO sympathizers. In March 2007, both the International Civil Commission for Human Rights Observation (CCIODH) and the National Human Rights Commission (CNDH) released in-depth reports on the human rights violations that occurred during security operations in Oaxaca.

The CCIODH concludes that the events that occurred form part of a juridical, political, and military strategy by the state and federal government to repress social movements. It reports the death of 23 people, disappearances, torture and mistreatment (including rape, electric shocks, and burns), and violations of the right to liberty, personal safety, and due process, among others. It provides 18 recommendations, including a full investigation of the events, an in-depth reform of public institutions, and increased dialogue among the parties involved. In contrast, the CNDH report on Oaxaca portrays the abuse by police forces as individual incidents, rather than as part of a larger military strategy to repress social movements. While the report cites the serious human rights violations, it fails to place blame on high-ranking members of the government, and its neglects to make recommendations to the government in order to address the continuing social tensions in Oaxaca, reverse impunity in cases of human rights violations, and prevent further incidents of similar abuse.

At the present time, no one has been accused of human rights violations at the state or federal level. On April 10, the Supreme Court announced that it will consider whether or not to assume the investigation of the human rights violations that occurred in Oaxaca, responding to a petition by members of the Revolutionary Democratic Party (PRD) in the House of Representatives.

Conclusions

So far nothing has been done to end impunity in the cases human rights violations that occurred during the conflict in Oaxaca. We are hopeful, however, that the Supreme Court will decide to investigate the case and recommend measures to reverse the continuing impunity.

Glossary

DICONSA: governmental shops that sell basic food products in rural areas, including corn, at subsidised prices. Its budget was cut by 50% from 2006 to 2007.

Nixtamal: a process of cooking corn with lime to produce dough for tortillas.

PROFECO: (*Procuraduría Federal del Consumidor*) The federal office with the mandate to protect consumers and publicise relevant information on commercial products and services.

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*) The Federal Attorney General's Office which has federal jurisdiction for investigating crimes.

SPP: The Security and Prosperity Partnership, which was created by the Heads of State of the US, Mexico, and Canada on March 23, 2005 in Waco, Texas in an effort to deepen the economic integration of North America accelerated by NAFTA, and to enhance the security of the continent through increased cooperation on various fronts. The partnership aims to create favourable conditions for investment and enhance the continent's competitiveness in the world market. The security policy established by the SPP is directed towards deterring "extraterritorial threats" in North America, including terrorism, organised crime, and the trafficking of humans and contraband.

Tortillería/ tortilla, tortillería is the place where *tortillas* (a flat bread made of corn or wheat) are made.

Centre Prodh was created in 1988 as an institution dedicated to the promotion and defence of human rights. It has four areas of work: legal defence, education, communication and analysis and international relations. Centre Prodh has consultative status with the United Nations Economic and Social Council and it also has the status of Accredited Organisation with the Organisation of American States.

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

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