



Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C.

Miguel Agustín Pro Juárez Human Rights Centre, A.C.

FOCUS

Human Rights in Mexico

Quarterly Bulletin, Issue 22, Spring 2005

In This Issue

1. Proof of the deficient rule of law in Mexico-The AMLO case

The impeachment process of Mexico City's Mayor reveals deep structural failures inherent to the rule of law in Mexico. Not only were civil and political rights seriously put at risk during the conflict, but manipulation of the justice system discredited the national institutions and provoked social disarray.

page 1

2. New waves of attacks against environmentalists in Mexico

Six years after Teodoro Cabrero and Rodolfo Montiel were unfairly imprisoned and tortured due to their struggle to defend local forests in Guerrero. Environmentalists are still being falsely accused, imprisoned, intimidated and their families are being killed. This is happening in different states, such as Guerrero and Quintana Roo, while international NGO's recognise the importance of their struggle.

page 4

3. Freedom of expression violations: Attacks against journalists

An overview of the serious conditions faced by journalists in Mexico during the current administration, where homicides, kidnappings, disappearances and threats have now become a way to deter journalists from investigating allegations of corruption and drug trafficking.

page 6

4. Constant impunity-FEMOSPP keeps failing to deliver

Three years since its creation, the FEMOSPP has not managed to prosecute past crimes against humanity committed by State agents during the "dirty war", one of the most repressive periods of Mexican history, marked by hundreds of enforced disappearances, arbitrary detentions and executions.

page 8

5. Persisten human rights violations in Mexico, as denounced by NGOs at UN Commission on Human Rights

Despite the Mexican government's openness at the international level, national human rights organisations remain concerned about the limited advances in the actual protection of human rights. They denounced the persistence of torture, femicides, and militarization in a parallel meeting at the 61th Commission on Human Rights.

page 10

Rule of law in Mexico *at risk*

The Mexican government has aggressively projected the international image of a full, working democracy and a government that respects, guarantees and protects human rights at the international level and specially, intergovernmental human rights bodies, for example at the UN Commission on Human Rights or the Inter-American Commission on Human Rights. But as we have stated on several occasions this image does not correspond to the reality in Mexico.

Recently the federal government has focused an inordinate amount of attention, even more than usual, on both federal and electoral issues. While the government devoted considerable attention to the impeachment process against the Mexico City mayor, human rights violations at state and local levels have been very serious.

Indeed, as presented in this issue of Focus, journalists have been murdered and intimidated throughout the country, while environmentalists have been unfairly imprisoned and even seriously attacked, resulting in tragic deaths. National and international human rights organisations have expressed their concerns and outrage in different ways, but, as of yet, there

have been no positive reactions from local or federal governments.

We believe the rule of law in Mexico has been severely damaged during this time. The impeachment process has clearly shown deficiencies in Mexico's separation of powers. It has also showed the deep deficiencies in our justice and criminal investigation system. The Attorney General's office work was put under scrutiny and did not survive the pressure since it had to give up on the accusation against Mexico City mayor. The Legislative branch failed to represent the opposition by large sectors of society to this impeachment process on the basis of a legal argument that was flawed in its origins.

Meanwhile, serious human rights violations have been attributed to powerful individuals and legal and illegal groups at the state level and in rural communities, all of which have enjoyed complete impunity, thus avoiding prosecution. These problems at the state and local levels have been widely ignored by the current federal government during its 5 year-period and will continue to be ignored judging by the current political agenda.

Proof of the deficient rule of law

in Mexico - The AMLO case

The impeachment process against Mexico City Mayor Andrés Manuel Lopez Obrador (AMLO) took place in the context of a prematurely-launched presidential campaign. During its development, it not only revealed deep, structural failure inherent in the rule of law in Mexico, but also the fact that this failure has provoked deficiencies in the country's human rights protection. It is even more worrying to observe that the government actors' conduct who promoted the impeachment is far from what would be expected of a government that has repeatedly waved the flags of democracy and human rights.

Everyone's right to civil and political rights – including the right to take part in the conduct of public affairs, to vote and be voted for (International Covenant on Civic and Political Rights, article 25, UN) – is an essential element of democracy. It is even more important to ensure and guarantee these political rights now as presidential elections will soon take place. During AMLO's impeachment process, these

rights were put at risk by the very same authorities responsible for protecting them, affecting not only AMLO's rights but those of society as a whole.

The AMLO case

The conflict started in March 2000 before AMLO had taken office as Mexico City mayor. Once in office, he was accused of not complying with an *amparo* resolution (see glossary) to suspend the expropriation of a plot of land called "El Encino". In 2001, the Federal District government (*Gobierno del Distrito Federal, GDF*) argued that it had complied with the suspension and that it had not taken any action to constitute the violation. However, in early 2002 a tribunal confirmed that the suspension had been violated and determined that AMLO was responsible for it. The Federal Attorney General's Office (*Procuraduría General de la República, PGR*) began the criminal investigation in October 2003 and stated that AMLO was responsible.

In May 2004, on the basis of the impeachment process contained in the Constitution, the Federal Chamber of Deputies began its investigation to determine whether there was enough evidence against AMLO to warrant impeachment. It was not until February 2005 that a majority at the Chamber voted in favour of impeachment.

As a consequence, the local Chamber (*Asamblea Legislativa del DF, ALDF*) appealed to the Supreme Court of Justice (*Suprema Corte de Justicia de la Nación, SCJN*) arguing that the Federal Chamber of Deputies was incompetent to carry out the process on the grounds that the D.F. is comparable to any other state and, therefore, the competent body should be the ALDF itself. At the same time, the Federal Chamber of Deputies claimed competence. The SCJN decided in May that the ALDF did not possess legal faculties to vote on the impeachment of the Mexico City Mayor.

Absence of the separation of powers

Since the conflict began, there have been clear signs of the absence of the separation of powers. Within the impeachment context, there has been constant political conflict between political parties related to an early pre-electoral campaign. This conflict has been visible at various levels, including confrontational public declarations made by President Fox and AMLO that have blurred the separation. For example, the *Partido Acción Nacional (PAN)* voted as a block supporting the impeachment process, together with the majority of the *Partido Revolucionario Institucional (PRI)*, which

allegedly had reached a political agreement with the PAN on the impeachment. Furthermore, on 6 April 2004, President Fox met with the President of the Supreme Court, Mariano Azuela, at the presidential residence in order to deal with the issue.

began. Article 206 of the *Amparo* Law does not specify sanctions for non-compliance with an *amparo* suspension, rather it stipulates that the sanction contemplated by the Federal Penal Code (*Código Penal Federal*) is applicable. The crime of the abuse of authority has sanctions for different



Demonstration during AMLO's impeachment day at the Zocalo, Mexico City, 7 April 2005

Photo: Centre Prodh / Tania Gómez

The "All Rights for All" National Human Rights Network (*Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos"*, Red TDT), and "*Miguel Agustín Pro Juárez*" Human Rights Centre (Centre Prodh) as part of it, considers that "the MP's decision (*Ministerio Público, MP*) to request the impeachment can be considered an arbitrary act according to international human rights doctrine (UN, Human Rights Commission, Office of the OHCHR in Colombia, April 2004, p. 283). According to the Inter-American Commission of Human Rights (IACHR), "the term 'arbitrary' is synonymous with irregular, abusive and the opposite of the rule of law" (Press Release Red TDT). The executive power's arbitrary attitude has underlined the entire process, despite that it constantly declared that the impeachment process was a matter of the rule of law. But from a legal point of view, the impeachment process was flawed.

Clear deficiencies regarding governmental policy

Despite the fact that the PGR had a year and a half to conduct the pre-trial investigation, it can be said that political convenience came before legality. Indeed, there is an essential issue that makes it clear how the impeachment process was politically, not legally, motivated – A legal flaw that had not been contemplated by governmental bodies before the process

situations (Article 215, Federal Penal Code), but none of them clearly match with the disobedience of the *Amparo* Law in question (Reforma, 23 May 2004).

In addition, Article 14 of the Constitution determines that "in criminal trials no penalty shall be imposed by mere analogy or majority will that is not decreed by a law exactly applicable to the crime in question". Consequently, the PGR could have avoided the criminal investigation against AMLO precisely because, according to the law, without sanction there is no crime. On such a basis it is possible to assert that the law was arbitrarily manipulated for a political purpose. However, such a legal flaw was neither considered relevant by the Chamber of Deputies nor by the PGR during the impeachment process, which highlights either the incompetence of the authorities, their ignorance of the norms, or worse, a deliberate will to ignore the law.

Moreover, Mexican legislation does not recognise the presumption of innocence, nor has it been considered in the various judicial reform proposals (See Focus Fall 2004). If AMLO had been put on trial, he would have been a victim of the inconsistency in the national legislation to guarantee this right. Indeed, the UN Human Rights Committee determined that: "By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit

of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.” (Human Rights Committee, General Comment 13, Item 7)

As far as the legislative power is concerned, on 7 April 2005 the Chamber of Deputies made the decision to impeach AMLO and remove him from office, showing deep ignorance of legal writings and the hierarchy of law in Mexico. The main argument that they used was Article 28 of the Federal Law on Responsibilities of Public Servants which determines that the suspension of a position takes effect immediately following the impeachment vote. However, this is a procedural law that does not override constitutional Article 111 which states that the suspension shall only be applicable once a judicial process has been initiated against the accused (La Jornada, Friday, 22 April 2005).

As a result, Mexico City inhabitants – who had democratically elected AMLO as Mayor – did not have a municipal executive from April 7 – 24. The Spanish Anti-corruption Prosecutor and Professor of the University of San Francisco, Carlos Castresana, pointed out that the accusation made against AMLO was insignificant and that the impeachment process could have been easily postponed. “The fact that it was not postponed brought about very serious consequences, doubly damaging to the right of suffrage: not only did it blatantly violate the right of the people who elected AMLO as mayor, but it also intended to control the Mexican people’s right to vote in the 2006 presidential elections, as it intended to prevent AMLO from running for the presidency despite the fact that, according to national polls, he was backed by a majority of electors.” (Proceso, 27 April 2005)

Citizen’s movement and outcome

As the impeachment process was taking place, several sectors of civil society began mobilizing and marching peacefully on a national and international scale. On Sunday, 24 April, this reached a climax during the “Silent March”: more than one million people marched through Mexico City to voice their discontent for the executive and legislative powers’ political manoeuvre. One of their main demands was the removal from office of the Federal Attorney General, General Rafael Macedo de la Concha. This social movement demonstrated that more than one million citizens did not feel

represented by the Federal Deputies who voted in favour of AMLO’s impeachment.

Unexpectedly, on 27 April, President Fox addressed the nation with a speech diametrically opposed to his original position throughout the process. He announced General Macedo de la Concha’s resignation and committed himself to thoroughly revise AMLO’s criminal file and remain open to dialogue. On 4 May, the new Federal Attorney General, Daniel Cabeza de Vaca, publicly announced that the criminal process would be discontinued since the sanction for such a crime was insufficiently defined in the legislation (La Jornada, “*Determina PGR no ejercer acción penal contra AMLO*”, 4 May 2005).

Conclusions

The Mexican authorities did not consider the gravity of the facts in human rights terms. The final political solution to the conflict did not recognise the violations of the rights to vote and be voted for, thus affecting not only AMLO’s human rights but those of the Mexican society as a whole.

The manipulation of the justice system as a way to solve this conflict was, from our point of view, merely political and put the Mexican democracy at great risk, as it discredited its institutions and provoked social disarray. Neither President Vicente Fox nor the Federal District Mayor can ignore their shared responsibility, along with the legislative power, to promote a set of constitutional reforms to be submitted to the legislature.

AMLO’s impeachment has revealed serious deficiencies as far as the separation of powers is concerned, including deep legal flaws concerning impeachment, the inefficiency of the PGR to elaborate criminal proceedings, the Chamber of Deputies’ ignorance of legal hierarchies and the political manipulation of the justice system. It also highlighted the fact that a large number of citizens do not feel well-represented by the Chamber of Deputies. As a consequence, it is necessary to:

- 1) Completely harmonize the Mexican constitutional framework with obligations that the Mexican State has assumed vis-à-vis international human rights instruments.
- 2) Guarantee the PGR’s independence and autonomy.
- 3) Undertake a reform of the Mexican State using human rights as a primary axis.



Assistants to the “Silent March” (24 April 2005), wearing the symbol “No impeachment”

Photo: Centre Prodh / Tania Gómez



New wave of attacks against environmentalists in Mexico

In the last few months there have been a series of acts that may be described as a renewed wave of attacks against environmentalists in different parts of the country. The victims of these attacks have suffered from unjust imprisonment, false charges and even the death of family members as a result of their activism.

Once again, repression against OCESP members and other local activists in Guerrero

A change in local government a few months ago brought with it hope for a prompt response to demands by human rights organisations, but the actual situation has been far from it. Members of the *Organización Ecológica de la Sierra de Petatlán y Coyuca de Catalán* (Organisation of Peasant Environmentalists from the Mountains of Petatlán -OCESP) have once again been victims of reprisals and intimidation due to their struggle to defend local forests from excessive logging and protect other environmental activists working in the area (AI, May 9, 2005 - AMR 41/011/2005 - 10/05). OCESP is the same organisation to which internationally-recognised environmentalists Rodolfo Montiel and Teodoro Cabrera belonged.

Summer 2000 to Summer 2003 and special issue).

An arrest warrant has been issued against 15 OCESP members based on an accusation of the murder of Abel Bautista, son of *cacique* (local political boss) Bernardo Bautista, a local timber trader. This accusation is based only on the testimony of one witness who claimed to have seen the killing. Boise Cascade, a transnational company, obtained a forest exploitation agreement in 1995. This company worked together with Bernardo Bautista and Rogaciano Alba from the *Ruben Figueroa Unión de Ejidos* to exploit the *Sierra de Petatlán's* forest. These two individuals were known for their constant intimidation of *ejidos* (communal land) and OCESP members.

1) Attacks against Albertano Peñaloza and his family

Albertano Peñaloza, one of the OCESP leaders, together with four of his sons, was ambushed and shot at on his way home in the community of Banco Nuevo on May 20, 2005. During this shooting two of Albertano's sons, Armando (20 years old), and Adutuel (9 years old), died and

the arrest warrant (Tlachinollan and Greenpeace press release 20 May 2005).

This attack was carried out a few meters from Albertano's home in the presence of his wife and his other children. This action also put in danger the rest of his family, since the assailants were shooting indiscriminately even when Albertano's wife ran toward the van where her family was being attacked (Tlachinollan, AI, Greenpeace, Centre Prodh, RTDT, Red Guerrense Press Conference, May 24, 2005). Albertano, his family, as well as national and international human rights organisations (Amnesty International, AI, and Greenpeace) believe that this outrageous attack was politically motivated and is directly related to Albertano's environmental activism with the OCESP.

Albertano's family fears for its safety and, as a result, lawyers from "*Centro de Derechos Humanos de la Montaña Tlachinollan*" are planning to request from the Inter-American Commission on Human Rights that precautionary measures be taken (IACHR) (op cit Press Conference).

2) False accusations and unfair imprisonment against Felipe Arreaga

Felipe Arreaga, another prominent member of the OCESP, has been falsely accused of the murder of Abel Bautista and was imprisoned on November 3, 2004. Felipe is another of the 15 OCESP members charged with an arrest warrant for the alleged crime. As mentioned earlier, only one witness has accused Felipe.

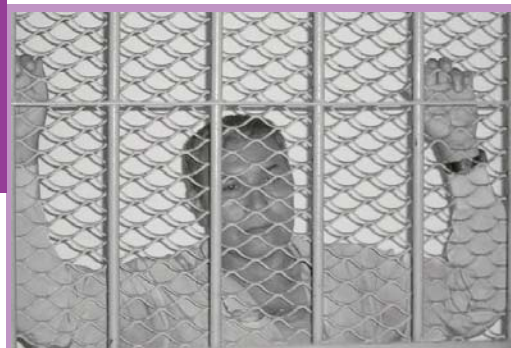
Felipe's defence team at the "*Centro de Derechos Humanos de la Montaña Tlachinollan*" assures that the local authorities have fabricated criminal evidence to falsely accuse him. According to Felipe's



Press conference: Representatives from Greenpeace, AI, Red Guerrerense, Centre Prodh, Centro de Derechos Humanos "Tlachinollan" and also Albertano's family, Celsa Valdovinos.

The OCESP members have worked since the end of the 1990s against the overexploitation of the *Sierra de Petatlán's* forest. As a result of their activism, Rodolfo and Teodoro were unfairly imprisoned and tortured by enforcement agents (see Focus

Albertano and one of his sons were seriously injured. Following the shooting, Albertano's van where he and his children were travelling at the time of the shooting registered up to 80 bullet holes. Albertano is one of the OCESP members included in



Felipe Arreaga in prison.
Photo: Centro de Derechos Humanos "Tlachinollan".





Members of the "Organización de Mujeres Ecológicas de la Sierra de Petatlán" led by Felipe's wife.

Photo: Centro de Derechos Humanos "Tlachinollan"

The illegal detention of Araceli Dominguez in Quintana Roo

Araceli Dominguez, president of the *Grupo Ecológico del Mayab* and one of the most important environmentalists in the Mexican Caribbean area, was accused of slander allegedly committed against Bernardo Zambrano, the owner of PROPAC Estate Agency's aquatic parks in Cancun and Cozumel. Though other environmentalists and journalists are accused of the same crime, only Araceli was detained on April 23, 2005. Bernardo Zambrano also filed a claim for two million pesos in moral damages. Zambrano is a relative of a powerful Mexican entrepreneur. Slander laws have been used in Mexico to deter mainly journalists, but also other individuals from uncovering corrupt acts.

Araceli and *Grupo Mayab* have been working in Quintana Roo for 22 years and have never before been accused. But when Araceli, together with Sara Rincón Gallardo from the Society for the Protection of Animals in Cancun, and a few journalists publicly denounced the illegal import of dolphins from the Salomon Islands (Australia) by the PROPAC Estate Agency in July 2003, that all changed. The illegally-imported dolphins at the time were, according to the International Fund for the

defence, they have overwhelming evidence of his innocence. On the day of the alleged murder, he had been in a different community to be treated by a traditional doctor and attended a wedding. His defence has already presented the relevant supporting evidence to support his testimony (including witnesses' statements and videos). In addition, the accuser's arguments are weak because, as Felipe's defence has detected, there are serious incongruities in the witness's statements, for example he claimed to have seen one OCESP member participating in Abel Bautista's killing, but this person had died two years before Abel's death. Recently, the witness declared that he had been threatened by a member of the judicial police and the accuser to lie that he had witnessed the act (Tlachinollan Press Release).

Felipe's case has attracted the attention of international human rights organisations. AI has named him a prisoner of conscience. The Environmental Defenders Law Centre (EDLC) has joined Felipe's defence team at the "Centro de Derechos Humanos de la Montaña Tlachinollan" as a consultant (*La Jornada*, 15 April 2005). The Washington Office on Latin America has lobbied U.S. Congress people regarding the seriousness of the situation (*La Jornada*, 21 April 2005).

Currently Felipe is facing trial, but his defence hopes their sound evidence will be enough to win this case. In the meantime, however, Felipe's health has suffered during his imprisonment and, if he is found innocent, he will be released after several months of unfair detention.

3) Members of local environmentalist organisations fear for their safety

Celsa Valdovinos, one of the founders of the "Organización de Mujeres Ecológicas de la Sierra de Petatlán", together with her husband Felipe Arreaga, also fears for her life and that of her family, especially after the violent attack against Albertano and his family. She believes that her life and the life of other environmentalists in the region are in danger. Therefore, she will also apply for precautionary measures from the IACHR (op cit. press conference).



Photo: Centro de Derechos Humanos "Tlachinollan"

Vegetable garden project ran by the "Organización de Mujeres Ecológicas de la Sierra de Petatlán"

Protection of Animals and their Habitat (IFAW), a major environmental scandal (*Centro Mexicano de Derecho Ambiental*, Greenpeace, et al; Press Release, 26 April 2005).

Over two years ago, Araceli and others worked intensely to denounce this irregularity. The initial reaction by the Federal government was to deny that the imports were illegal, but eventually it had to admit that the dolphins had been illegally imported to Mexico and, as a result, a high ranking Federal public servant was forbidden from occupying another public position for a three-year period for issuing the illegal import permit (*La Jornada*, April 27, 2005).

Following Araceli's detention, there was an outcry from national and international environmental organisations, including

Centro Mexicano de Derecho Ambiental, *Conservación de Mamíferos Marino*, Defenders of Wildlife, Greenpeace, *Grupo de los Cien*, IFAW and *Teyeliz*. Within a few days she was released and freed of any charges. But, although she was freed, the fact that she was accused and detained as a consequence of looking after the environment, and that the government's apparatus was used with the purpose of deterring her and others from continuing their activism, might set a negative precedent for similar situations in the state of Quintana Roo.

Conclusion

"Miguel Agustín Pro Juárez" Human Rights Centre believes that the attack against Albertano and his family and the unfair detention of Araceli and Felipe based on false charges are not isolated cases, but

rather part of a larger campaign of repression against the work of environmentalists.

While the environmentalists' work has been internationally recognised, such as the recognition of Felipe Arreaga as a prisoner of conscience by AI, international NGO support of Araceli Domiguez and awarding the Goldman Prize to Isidro Baldenegro and Rodolfo Montiel, in Mexico their work has been criminalized. This is a clear sign that the Mexican State does not offer environmentalists adequate conditions to develop their activities freely and safely.

Additionally, by failing to protect environmental activists, the Mexican government is also failing to fulfil its international commitments, among them Article 2 of the UN Declaration on Human Rights Defenders.

Freedom of expression violations.

Attacks against journalists

Violations of the freedom of expression are serious, systematic human rights violations which should not occur in a democratic country. Exercising this right, however, implies disturbing the economic and political interests of powerful sectors of society. During the current government in Mexico, a large number of attacks have been registered against journalists. Far from being isolated cases of social violence, they are a sign of State repression and its incapacity to protect journalists who denounce drug dealing, corruption by authorities, organised crime, and illegal actions by local governments, among others.

Freedom of expression and the right to access to information

The rights to freedom of expression as well as to be informed are essential to the correct development of a democracy. Citizens must have access to accurate and prompt information to be able to monitor government action. Journalists currently play an important role in Mexico in the exercise of these rights by informing citizens, through their publications, about corrupt acts or suspicious behaviour by State authorities. It appears that this is precisely the reason why they have been most affected by repression and violence.

During President Fox's term, the International Press Society (IPS) and other international organisations have registered 15 homicides against journalists. According to the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, Mexico, together with Brazil, Peru and the Philippines, are dangerous places for the press. "Almost all the journalists killed in those countries were investigating corruption and alleged mismanagement... Media security remains a grave problem ...journalists were murdered because of their investigative activities regarding social and economic issues. Most of the time these crimes are not adequately punished; on the contrary, in many cases there were strong suspicions of an involvement by legal authorities" (See E/CN.4/2005/64, 17 December 2004 par. 46, 53).

The 2004 Annual Report by the OAS Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) outlines the fact that in Mexico, despite advances in recent cases, there have also been homicides, kidnappings, intimidation and/or threats committed against journalists, as well as the destruction of media facilities

(see Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2004). The OAS Rapporteur reported on 10 cases of aggression toward journalists and repression linked to the slander law in Chiapas (See Focus, Spring 2004), including three homicides and 12 aggressions in 2004. Although the Rapporteur did not quote exact numbers in 2003, it reported aggressions committed against journalists in the state of Guerrero who were investigating and publishing information about human rights violations and irregular military actions occurring at checkpoints. Also, it mentions that, in the state of Chihuahua, journalists who were covering the murdered women in Ciudad Juarez had been intimidated and threatened. In the 2001 Report, one homicide and three aggressions were reported. Despite differing figures from one source to another, it is clear that aggression against journalists has not stopped under the current government.

Historically speaking, the most homicides of journalists recorded in a single presidency (46) occurred from 1988-1994 under President Carlos Salinas de Gortari. There were 121 homicides committed against journalists from 1970 (under Luis Echeverría) to 2000 (under Ernesto Zedillo).

Regarding other forms of aggression such as threats, kidnapping and intimidation, 126 incidents were recorded in 2001, 100 in 2002, and 76 in 2003, as well as one forced disappearance (Center for Journalism and Public Ethics –).

Anders Kompass, representative of the UN High Commissioner on Human Rights in Mexico, recently declared that “from the international perspective, Mexican journalism and the right to information are at serious risk due to the continuous murder and forced disappearance of journalists”. He also asserted that freedom of press and the right to practice journalism are of the utmost importance, so much so that the State has the obligation not only to investigate and clarify the wrongdoings, but also to create a more secure context, that may even include escorts or some sort of protection (April 15, 2005, *Peligra el derecho a la información en México, alerta Naciones Unidas, La Jornada*).

The attacked journalists were investigating drug trafficking, corruption, embezzlement and the police, and, in some cases, suspicious links between them all, especially at the local level (see table for more details). The authorities claim that almost all crimes are related to drug trafficking, but as previously mentioned, the attacks are also related to corrupt practices by authorities, especially local ones.

The situation of Mexico within a regional context

According to the Inter American Press Association (IAPA,), the IPS and other organisations, in the six-month period from October 2004 to April 2005, three journalists were murdered in Mexico, one in Nicaragua, two in Colombia, two in Haiti and one in Ecuador. In the previous year from October 2003 to October 2004, three journalists were murdered in Mexico, three in Colombia and two in Brazil. From October 1999 to October 2000, four journalists were murdered in Mexico and nine in Colombia. According to the OAS Reports, last year there were three assassinations in Mexico, two in Brazil, two in Nicaragua and three in Peru. It is important to note that, even as statistics vary, they still show that Mexico has experienced a high level of aggression against journalists since 2000.

Civil society concerns

“Miguel Agustin Pro Juárez” Human Rights Centre (Centre Prodh) is concerned about this situation, not just because it constitutes an aggression against society as a whole, but also because it impacts our fragile democracy. Federal and local governments have failed to protect journalists. Therefore, the Centre is supporting several campaigns to oppose

the government’s violation of the right to freedom of expression, such as *Ni uno más* (No more aggressions!). The campaign began last May in the context of the UNESCO World Press Freedom Day, supported in Mexico by the Center for Journalism and Public Ethics (Cepet), the Mexican Academy for Human Rights, Centre Prodh, “Fray Francisco de Vitoria” Human Rights Centre, *Centro Nacional de Comunicación Social* (Cencos) and *Comunicación e Información de la Mujer* (Cimac). The campaign is also supported by 160 U.S. and Mexican journalists (see for further information).

Conclusions

As we look at the figures, one can see how the State has failed to protect journalists who have tried to denounce corrupt and illegal acts committed by State authorities and organised crime. The constant attacks against journalists show that Mexico has a long way to go before democratic values can be protected and applied, and democracy and the freedom of expression respected and protected. Journalists should be ensured of their right to inform and society should have the right to be informed in order to be able to monitor the State’s actions. This should be accomplished without threats or fear for one’s safety. Only when these violent acts stop will we be able to build a full democracy in Mexico.

Table: Aggression against journalists in Mexico during the Fox presidency

#OFVICTIMS	VICTIM’S AREA(S) OF INVESTIGATION PRIOR TO INCIDENT	CRIME
12	Drug trafficking, links between organised crime, authorities and police; corruption	Homicides
1	Criticism of local authorities	Suspected homicide
1		Kidnapping and homicide
1	Properties owned by state governor	Kidnapping, homicide, gunshots and incineration
6	Alleged embezzlement, corruption by authorities.	Physical aggression
5	Political murders linked to State intelligence service, surveillance of political parties and NGOs, child prostitution, local politics, security, corruption, infiltration of extreme rightwing groups into government	Threats
1	Drug trafficking	Disappearance



Photo: Centre Prodh / Tania Gómez

Journalists in danger.

Constant impunity

FEMOSPP keeps failing to deliver

The period from the 1960s to the 1980s was marked by one of the most repressive governments in Mexican history. After 30 years, survivors of crimes against humanity in Mexico are still struggling to obtain integral justice, meaning, clarification of the crimes, reparation and measures of non-repetition, and to provide elements for a State policy that would guarantee the full application of international human rights instruments.

Historians, academics, non-governmental organisations and the surviving relatives of the victims have identified and registered arbitrary detentions, torture, extrajudicial executions and forced disappearances. These violations were part of a systematic pattern of generalised attacks against civil society, which have been classified by the International Criminal Court (ICC) as crimes against humanity (article 7, Rome Statute of the International Criminal Court).

Diego Lucero's case

The “*Miguel Agustín Pro Juárez*” Human Rights Centre (Centre Prodh) has documented and filed some paradigmatic cases that exemplify the patterns described above. The disappearances of Alicia de los Ríos Merino and five members of the Guzmán Cruz family that occurred during the 1970s are evidence of the government's arbitrary behaviour during this period. The limited results of the investigation to this day are a clear sign of the impunity that has protected the criminals.

Another illustrative case, which has been filed by Centre Prodh, is the arbitrary detention, torture and extrajudicial execution of Diego Lucero Martínez. He was a 28 year-old social leader, father of four children, engineering student and a recognised student leader who participated in capturing the “*Maderas*” army barrack in Chihuahua on 23 September 1965.

Diego Lucero Martínez was arrested in the city of Chihuahua on 16 January 1972 by local judicial police officers and interrogated by agents for the *Dirección Federal de Seguridad* (Federal Direction for Security – DFS), for his participation in a bank robbery organised by a group of dissidents. The DFS was a political body of the Ministry of the Interior, blamed for being one of the main governmental bodies

responsible for detentions and forced disappearances of political dissidents. Two days later, on 18 January 1972, his family received Diego's body. The official explanation for his death was that he had died during a confrontation. The government's representatives required, as a condition upon returning the body to his family, that the coffin not be opened. Nevertheless, some relatives did open it and observed clear signs of torture.

The contradictory versions offered by the DFS on Diego's case, consisting of incongruities of times, dates, place and the way Diego Lucero Martínez was killed, are a sign of the DFS's responsibility for the crime. These incongruities do not lend credibility to the official version of the confrontation that was registered by the Chihuahua media.

It is important to emphasize that these crimes are not isolated, but that, as well as in other Latin American countries, they were carried out within a context of governmental authoritarianism and were part of systematic repression by the State. They were orchestrated under the protection of an arrangement that allowed, tolerated and even supported grave human rights violations against activists, social and student leaders, rebels and dissidents in general.

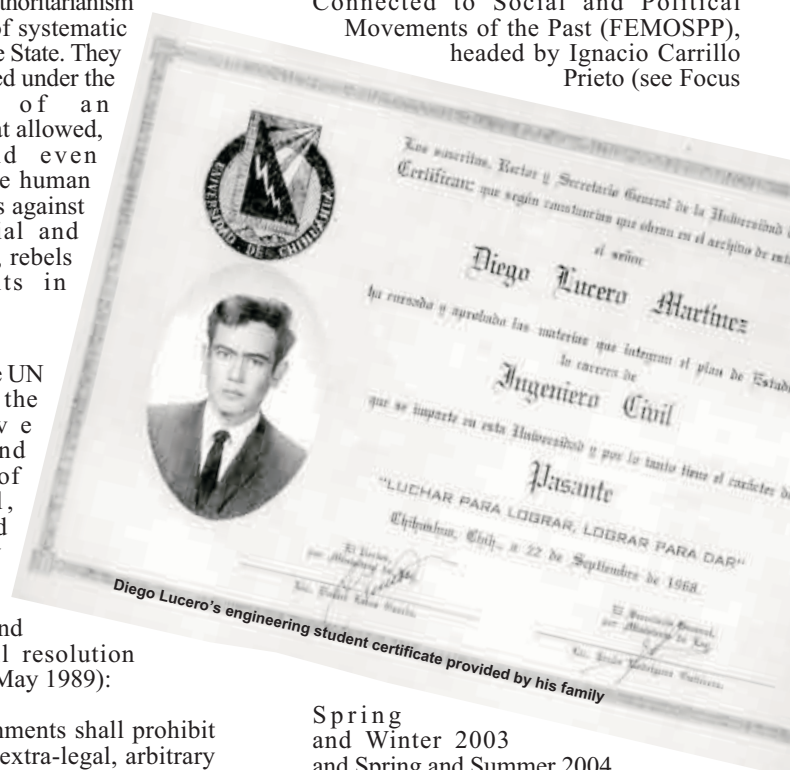
According to the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Recommended by Economic and Social Council resolution 1989/65 on 24 May 1989):

“1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions

are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. **Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.”**

FEMOSPP's shortcomings

Among the questioned attempts to combat impunity in these sort of crimes is the fact that, on 27 November 2001, the President issued different measures on justice administration for crimes committed against people linked to past social and political movements. He created 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), headed by Ignacio Carrillo Prieto (see Focus



Spring and Winter 2003 and Spring and Summer 2004, for past FEMOSPP assessments).



Press conference. Diego Lucero (Diego Lucero's son), Marco Rascón and representatives from Centre Prodh, Fundación Diego Lucero
Photo: Centre Prodh.

The *Fundación Diego Lucero*, el *Comité de Madres de Desaparecidos Políticos de Chihuahua*, the *Asociación de Familiares de Detenidos, Desaparecidos y Víctimas de Violaciones a los Derechos Humanos*, the Centre Prodh and the Mexican Commission for the Defence and Promotion of Human Rights (CMDPDH) have followed up the actions and results achieved by FEMOSPP since its creation, included FEMOSPP's annual reports produced by Centre Prodh and the above organisations. This year's report has been delivered to the OAS Special Rapporteur for Mexico of the Inter-American Commission on Human Rights, and to the 61st session of the UN Commission on Human Rights in Geneva.

Now three years since its creation, it is clear that none of the three state powers has the political will to solve the crimes committed during the dirty war period. The Executive has created a Special Prosecutor's Office that is seriously deficient and lacks human and material resources. On issues related to the criminal statute of limitations, the intervention of military jurisdiction and the classification of crimes against humanity, the legislative power not only has agreed on inadequate local legislation to deal with these sort of crimes, but also it has approved legislation contrary to international human rights instruments.

A matter of image

Despite the fact that the Mexican government has claimed to be committed

to the investigation and prosecution of crimes against humanity such as forced disappearances, torture and genocide, in accordance with international treaties and covenants, there is no internal framework that allows for the fulfilment of the highest attainable rights contained in the international human rights instruments. Furthermore, the reservations and interpretative declarations in some international treaties actually hamper the possibilities to prosecute those responsible for these crimes.

For example, the interpretative declaration that the Mexican State made when ratifying the UN Convention on the Non-Applicability of the Statutory Limitations to War Crimes and Crimes Against Humanity after 33 years is against the Convention's reasoning. The reservation stipulates that the Convention is only applicable to crimes committed after the Convention was ratified in Mexico.

Enforced disappearance still present to these days

Centre Prodh is extremely concerned because if the crimes committed in the past are not sanctioned, it is likely that such abuses will keep on occurring. In light of this, Centre Prodh has been involved in campaigns that aim at reforming the criminal law to include the crime of enforced disappearance in local legislations. So far, the campaigns have focused on the states of Guerrero and Michoacán. It is hoped that

supporting this legislative reform should create an adequate legislative framework in order to punish these crimes, when committed in the future.

Conclusion

Despite the FEMOSPP's deficiencies and limitations that Centre Prodh and other organisations have made public in the past, one of our main worries is that the weak initiative taken by the Mexican government to respond to claims of hundreds of surviving victims who continue suffering the psychological and physical consequences of the dirty war will vanish from current political debate.

The judicial and legislative powers have the obligation to strengthen the state policy that responds to the need for clarification of the dirty war crimes, and also to the need of a modern democracy to pay its historic debts. Also, by supporting judicial reforms at the local level to punish crimes against humanity in the future.

The parameter to determine FEMOSPP's efficiency and the real commitment by the executive will be measured on the basis of rapid and forceful action and the continuation of the initiative from now until the end of the current administration.



Press coverage of the bank robbery by Diego Lucero and others in 1972, showing they were considered criminals.

Persistent human rights violations in Mexico, as denounced by NGOs at UN HUMAN RIGHTS COMMISSION

As the 61st UN Commission on Human Rights (UNCHR) Session was being held in Geneva, (Switzerland), on April 1, 2005 human rights organisations from the National Network “All Rights for All” (RTDT), the Mexican Commission for the Defence and Promotion of Human Rights (CMDPDH), together with international NGOs, presented their views on the current human rights situation in Mexico before representatives of the international community.

Paradoxical government openness abroad

Before an audience composed of more than fifty members of international NGOs and delegates, the Association for the Prevention of Torture (APT) highlighted the fact that the current government has sustained a paradoxical activism and an open discourse towards human rights issues, especially at the intergovernmental level.

Indeed, since President Fox took office, Mexico has signed and/or ratified five optional protocols, two UN conventions and two Inter-American human rights conventions. However, it is important to emphasize that this political dynamism contrasts deeply with blatant and ongoing human rights violations that occur as a result of deep structural deficiencies in the justice system which the National Human Rights Program (HRNP) will be unable to rectify.

Persistence of torture

Amnesty International acknowledged Mexico’s progress when last March ratified the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). However, the ratification does not exempt the Mexican government from working together with NGOs to set up an efficient national preventive mechanism, as established by the OPCAT. Such a mechanism would allow independent experts to “examine the treatment of the persons deprived of their liberty in places of detention (...) with a view to strengthening, if necessary, their protection against torture.” It also has the capacity to make recommendations to the relevant authorities with the aim of improving the treatment and conditions of people deprived of their liberty (article 19, OPCAT).



Representatives from the Association for the Prevention of Torture, Amnesty International, Centre Prodh and “Fray Bartolome de las Casas” Human Rights Center during the 61st period of sessions of the UNCHR.

Photo: “Fray Bartolome de las Casas” Human Rights Center

In May 2003, after a five-year investigation on Mexico, the UN Committee Against Torture (CAT) concluded, that “...these [cases of torture] are not exceptional situations or occasional violations committed by a few police officers, but that, on the contrary, the police commonly use torture and resort to it systematically as another method of criminal investigation”(CAT, CAT/C/75, Report on Mexico, May 26, 2003) Torture remains a tool that allows the Public Prosecutor (Ministerio Público, MP) to fabricate crimes. The fact is that these abuses are not investigated, as demonstrated by the case of environmental leaders Rodolfo Montiel and Teodoro Cabrera in the Petatlán region of Guerrero.

On the other hand, despite the 2004 publication of the Attorney General’s office Agreement, (*Procuraduría General de la República*, PGR) on the use of the Istanbul Protocol in order to register torture complaints, an autonomous governmental office has yet to be designated. As Amnesty International highlighted during the meeting, if the MP is appointed to carry out this function, there will be no guarantee of its impartial application, as this office is often accused of committing torture.

Femicide

Another serious issue is the incapacity of the Mexican State not only to prevent hundreds of kidnappings, rapes and murders of women and girls that have occurred

repeatedly in the northern state of Chihuahua since 1993, but also to sanction the individuals guilty of perpetrating such crimes. According to the UN Committee for the Elimination of Discrimination against Women, between July 1993 and July 2003, 321 women from Ciudad Juarez, Chihuahua were murdered, not to mention those mutilated, raped and disappeared. Femicide has been increasing: between 1993 and 1998, a victim appeared every twelve days; between 1998 and 2003, every eleven days; and since 2003 every ten days (CEDAW, 27 January 2005, item 144).

During this session, the CMDPDH, together with the international organisation WITNESS, presented a documentary titled “Dual Injustice”, which recounts the story of Neyra Azucena Cervantes, a young girl murdered in 2003, and of David Meza, her cousin. He was tortured and accused of murdering Neyra. Despite proof of his innocence, he remains in jail awaiting sentencing.

Once again, the justice system and the entire social fabric are being severely challenged by femicide. As outlined by Asma Jahangir in her 1999 report: “The arrogant behaviour and obvious indifference shown by some state officials in regard to these cases leave the impression that many of the crimes were deliberately never investigated for the sole reason that the victims were ‘only’ young girls with no particular social status and who therefore were regarded as expendable”. (See report of the Special

Rapporteur on Extrajudicial, Summary and Arbitrary Executions, Asma Jahangir, 25 November 1999, E/CN.4/2000/3/Add.3)

Militarization and impunity in the state of Chiapas

The “Fray Bartolomé de las Casas” Human Rights Centre denounced the fact that 91 military camps still remain in Chiapas (despite that seven were removed in 2000). They also mentioned that the military strategy developed by the Mexican government to deal with the Chiapas conflict consists of supporting paramilitary groups in order to weaken *Zapatista* social bases. In addition, crimes against humanity committed by such groups during President Ernesto Zedillo’s mandate, such as the Acteal massacre, have been ignored by the federal government. 120 cases have been registered in the northern region of Chiapas: 85 extrajudicial executions and 37 forced disappearances, eight of which were presented before the Inter-American Commission on Human Rights (IACHR; see Focus Winter 2005; Newsbriefs). Overall, the current government has been negligent in thoroughly investigating crimes committed by paramilitary groups, which mostly have been processed as common crimes.

The National Human Rights Program fails

In this context, “*Miguel Agustín Pro Juárez*” Human Rights Centre (Centre Prodh) pointed out that the NHRP, launched in December 2004 by the federal government, fails to address structural problems. Above all, the approval of several reforms pending in Congress (constitutional reform on human rights and judicial reform) is a condition for the success of this program. Moreover, the Program lacks post-

2006 indicators and implementation mechanisms when a new president will be appointed (See Focus Winter 2005).

In light of the many difficulties faced by Mexican society to ensure justice for human rights violations, the aforementioned NGOs finally requested that the Office of the United Nations High Commissioner for Human Rights in Mexico (OHCHR) expand its mandate in the country in order to monitor and provide follow-up action on the recommendations included in the UN Assessment on Mexico. This would be an efficient way to provide the current technical cooperation process between the OHCHR and the government with helpful tools in order to deal with the deeper causes of human rights violations.

Position of the Mexican government

The Mexican Delegate to the Human Rights Commission attended the briefing session. This is worth mentioning since the Mexican Government had not taken part in NGO events organised within the UNCHR’s context for many years. However, its presence was purely diplomatic, emphasizing the alleged efforts made by the current administration through several reform proposals as well as initiatives promoting civil society participation, instead of acknowledging the gravity of the facts presented by the NGOs. This way the Mexican government reinforced its already positive image at the UNCHR gained by adopting a proactive attitude in Geneva. Despite the projected positive image, national and international human rights organisations are nevertheless concerned about the limited advances in the actual protection of human rights in Mexico based on daily monitoring of human rights violations in Mexico as well as direct contact with victims.

News Brief

News Brief

Right to water

The Intersectorial Forum on the Human Right to Water was held in Mexico City from March 9 –10, 2005. It intended to create a space for reflection, analysis, dialogue, research for solutions and proposals regarding the human right to water. This initiative represents an attempt to raise awareness about and develop public policy proposals for water issues. It was held within the context of the Campaign for the Promotion of Economic, Social, Cultural and Environmental Rights in Mexico City that several institutions and organisations have been developing since 2003. It is hoped that proposals presented during the forum will go beyond sectors and territories.

Of additional importance, from March 17 – 20, 2005, Centre Prodh, together with the *Centro Mexicano de Derecho Ambiental* (Cemda), the Gender and Environment Network and the *Red Mexicana de Acción contra el Libre Comercio* (RMALC), took part in the Alternative Forum on Water (FAME, Forum Alternatif Mondial de l’Eau) in Geneva, where proposals were made to create new institutions, new initiatives such as a UN Convention on Water and to launch public policies so that these mechanisms can allow the global water crisis to be solved through better water management involving all sectors of society. Finally, in March 2006, the 4th Water Forum will be held in Mexico. This forum is being supported by sectors that are in favour of water privatisation and there is the fear that human rights issues relating to the right to water will not be considered. Therefore, some NGOs have designed a strategy to prepare an event in Mexico to offer the NGOs’ human rights vision. For more information on this campaign and related issues, please send an e-mail to centroprodh@sjsocial.org

Glossary

Amparo, There are two different *amparo* actions that can be filed to challenge the constitutionality of an official act or a law that violates individual rights. Generally an *amparo* is filed either to cease or prevent an act of authority, such as a detention.

CNDH, *Comisión Nacional de Derechos Humanos*, National Human Rights Commission. Governmental body set up in 1990 to investigate human rights abuses.

Fiscalía Especial, Special Prosecutor's Office. A prosecutor's office created and designated to investigate specific crimes.

FEMOSPP, the Special Prosecutor's Office created in 2001, to investigate crimes committed by government officials the *dirty war* (1960s-1980s) which was the alternative solution given by the Federal government to the proposal to create a Truth Commission.

IACHR, Inter-American Commission on Human Rights.

IMSS, *Instituto Mexicano del Seguro Social*, Mexican Institute of Social Security. Governmental body in charge of providing health and pension services to wage-earners.

JFCA, *Junta Federal de Conciliación y Arbitraje*, Conciliation and Arbitration Federal Board. A tripartite (workers, employers and government officials) tribunal in charge of processing and resolving labour conflicts between workers and employers.

OHCHR, Office of the UN High Commissioner for Human Rights.

Ombudsman, an individual appointed to receive, investigate, report on and (in some instances) resolve complaints against institutions.

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

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

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

PRI, *Partido Revolucionario Institucional*, Revolutionary Institutional Party, which held power for 71 years until defeated in the July 2000 elections.

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.

For further information or to join PRODH's membership, please contact:

Miguel Agustín Pro Juárez
Human Rights Centre

Serapio Rendón 57-B
Col. San Rafael, Mexico DF 06470
Tel: (5255) 5546 8217,
5566 7854, 5535 6892, Fax: ext 108
Email: prodh@sjsocial.org
Web page: <http://www.sjsocial.org/PRODH>

Director: David Velasco
Contributors to this issue: Rodolfo Aguirre, Alejandra Ancheita, Mélanie Berthaud, Gabriela Gorjón, Luisa Pérez, Mireya del Pino, David Velasco, Irasema Zavaleta.
Editor: Irasema Zavaleta
Designer: Tania Tamara Gómez

Miguel Agustín Pro Juárez
Human Rights Centre, A.C.



Centro de Derechos Humanos
Miguel Agustín Pro Juárez, A.C.

FOCUS
Human Rights in Mexico

Serapio Rendón 57-B Colonia San Rafael México, D.F. 06470 México