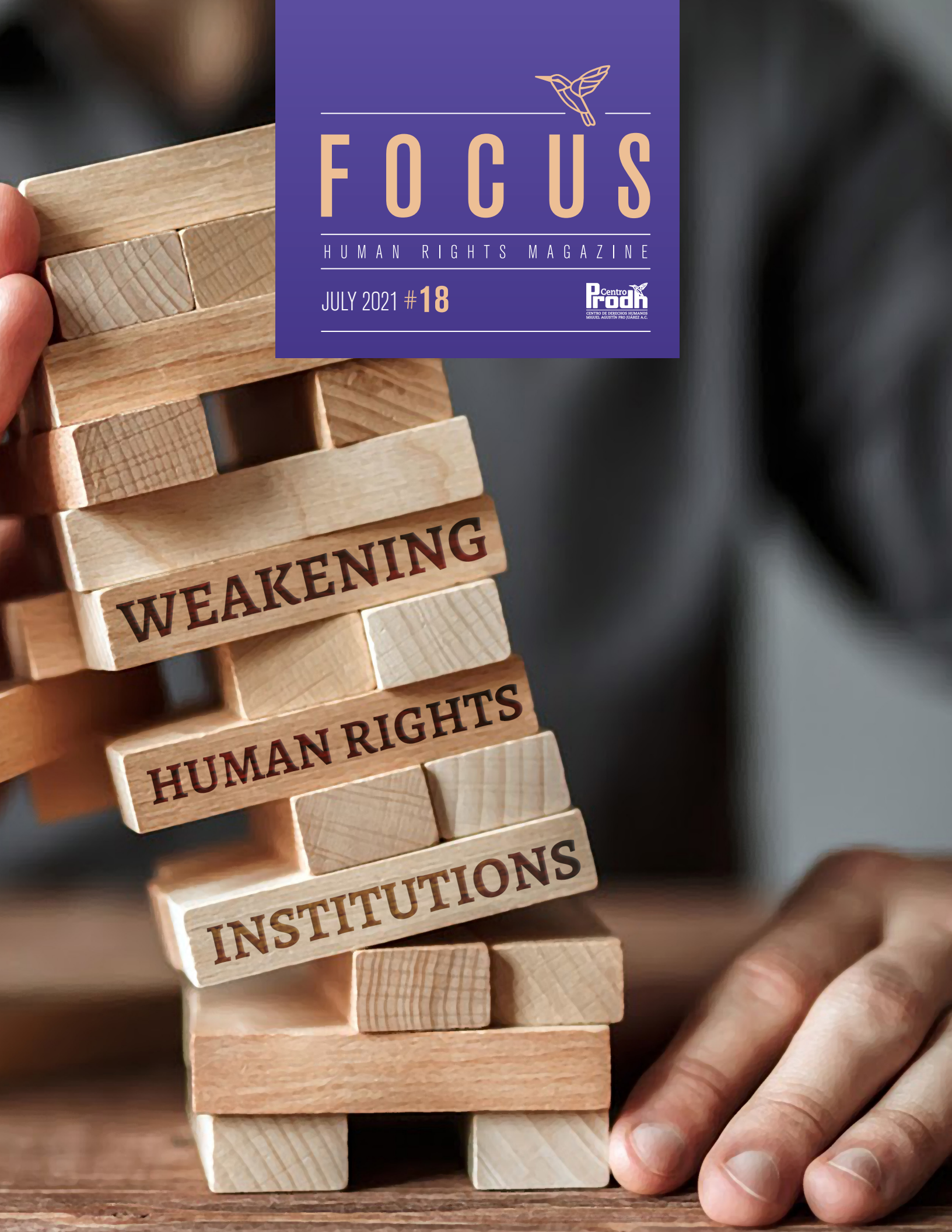

FOCUS

HUMAN RIGHTS MAGAZINE

JULY 2021 #18

Centro Prodh
CENTRO DE DERECHOS HUMANOS MIGUEL AGUSTÍN PRO JUÁREZ A.C.

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SSince being founded by the Jesuists in 1988, the Miguel Agustín Pro Juárez Human Rights Center (Center Prodh) has worked to defend, promote and increase respect for human rights in Mexico, with a focus on social groups that find themselves in situations of vulnerability such as indigenous populations, women, migrants and victims of social repression.

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Editorial | *The Weakening of Institutions that Protect Human Rights*

Photo: AP | Eduardo Verdugo

The protection and enjoyment of a population's human rights is likely the most important yardstick for evaluating whether or not a democracy is doing its job. In Mexico, the serious human rights crisis – which had worsened by the "War on Drug Trafficking" – fueled, to a large extent, a deep frustration with the previous regime that was reflected in the 2018 election results, when a new political party was elected into power.

Given that this context facilitated the election of the new federal administration, victims' organizations and civil society expected a strong advance in their demands, born out of decades of deep, constant, and often painful struggles. Struggles that, despite not fully reversing the reality of shocking impunity, had achieved important victories, including the birth of the ombudsman system, the constitutional reform on human rights, and the ever-growing recognition of the legitimacy of civil society's work in this area.

Of course, these achievements were neither complete nor absolute. Human rights organizations have long pointed out the need to evaluate and reform the governmental institutions responsible for guaranteeing human rights. It should be acknowledged that these institutions have had little impact in the face of the high levels of impunity that prevail in the nation, have lacked relevancy for the protection of the rights of the impoverished majority, and, in many cases, have even generated broken bureaucracies. Nevertheless, there is no doubt that this institutional framework, which is both revised and reformable, has performed important functions in guaranteeing people's rights. The new administration needed to build on these frameworks.

However, this has not happened. Several of these mechanisms and institutions began to be weakened at the Federal level. This institutional weakening is worrying: to get out of the human rights crisis, political will alone is not sufficient; there must also be institutions capable of implementing policies that last. In addition, the weakening of federal institutions generates a model that might soon be mirrored at the local level, where the institutions tend to be even weaker and more susceptible to undue intrusions from the governors.

In this issue of *Focus* we offer a brief overview of some of the most worrying aspects related to this weakening of the institutions and mechanisms for the defense of human rights, with the conviction that the institutions must be reformed to become stronger, not weaker.

Santiago Aguirre Espinosa
Director of Center Prodh

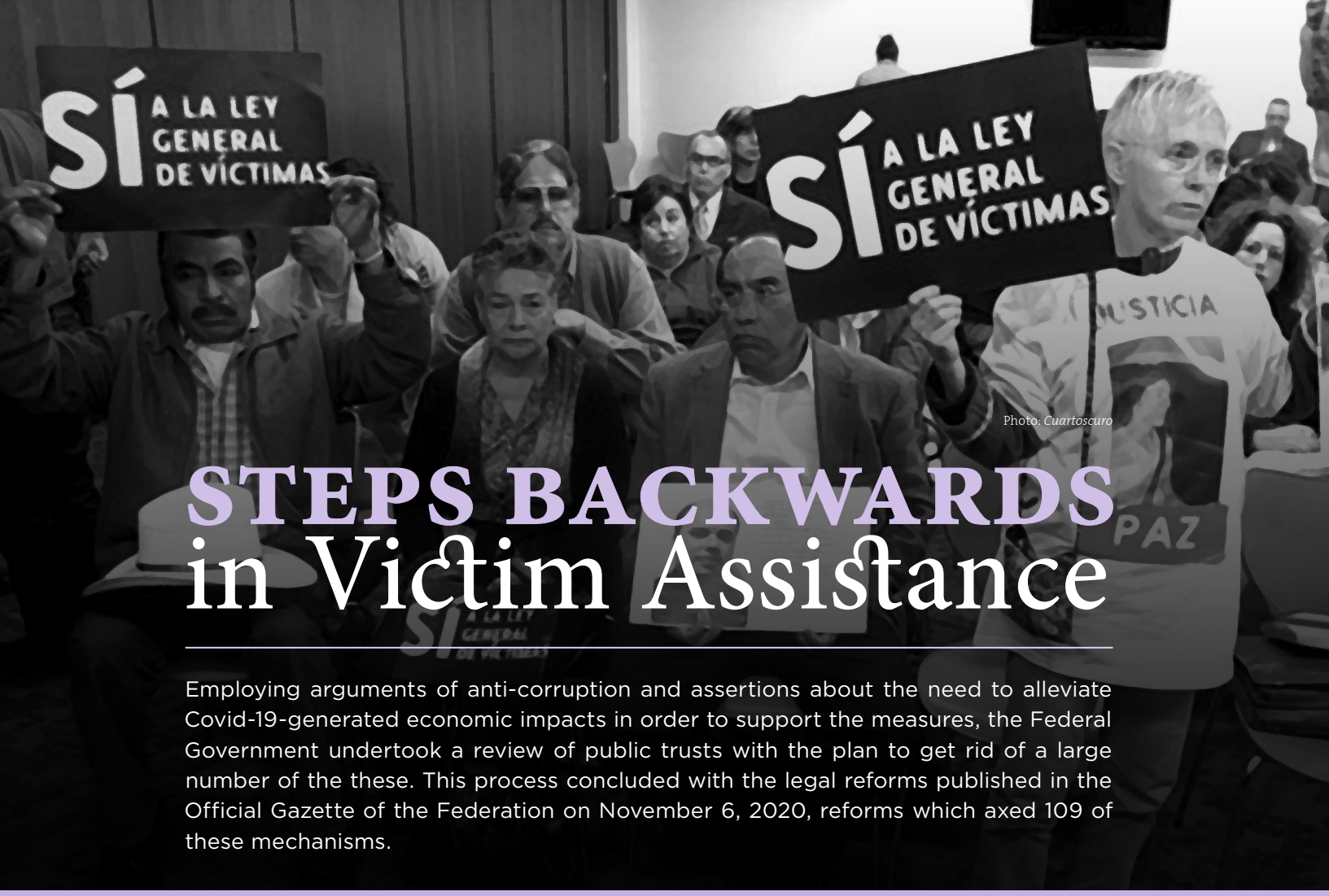

Photo: *Cuartoscuro*

STEPS BACKWARDS in Victim Assistance

Employing arguments of anti-corruption and assertions about the need to alleviate Covid-19-generated economic impacts in order to support the measures, the Federal Government undertook a review of public trusts with the plan to get rid of a large number of the these. This process concluded with the legal reforms published in the Official Gazette of the Federation on November 6, 2020, reforms which axed 109 of these mechanisms.

There is no doubt that undertaking a review public trusts had ample justification. For decades, these financial mechanisms have been a space conducive to corruption. However, in some cases, last year's reforms lacked an in-depth evaluation and a perspective that aimed to guarantee, rather than undermine, human rights.

In particular, some of the canceled trusts effectively served to materialize relevant public policies on human rights and victim care. Undoubtedly, a proper evaluation could have led to improvements without the need to eliminate them altogether. In addition, it should be noted that the review and termination were not objective: for example, the opaque trusts for the Armed Forces were not touched; instead, in the current context of increasing militarization, their trusts were increased.

In this text, we refer especially to the way in which the ending of the trusts created in the Law for the Protection of Human Rights Defenders and Journalists as well as the General Victims Law undercut rights that had been won over the past years, through the tireless work of victims' collectives and civil society.

It is necessary to highlight that both of the aforementioned laws were debated and approved in the context of the serious human rights crisis that Mexico has lived since 2006. The laws sought to address specific objectives related to the care of victims and the protection of defenders and journalists. However, the public trusts created for the implementation of these laws were abolished without considering or designating another mechanism to ensure the continued fulfillment of the functions they had performed, nor taking measures to ensure the allocation of the minimum of resources for the obligation in the Laws.

In relation to the General Victims Law, the Congress eliminated all reference to the Comprehensive Aid, Assistance and Reparation Fund (FAARI), provided for in Article 132, Section I of the law.

The now eliminated section guaranteed continuity in the attention to victims, by establishing the following rules for the management of

the FAARI: i) allocated resources could not be used for a different purpose; ii) the amount allocated could not be decreased; and iii) the contribution had to be expressly labeled for this purpose in the Expenditure Budget of the Federation - which would happen as long as the fund's resources were below the minimum established by law. These safeguards were removed from the legal text.

It is also important to highlight that the FAARI was independent of the operating budget of the Executive Commission for Attention to Victims. Meaning that the FAARIs resources were not destined to pay salaries, office supplies, or rent of the institution's buildings. Instead, the FAARI could only be used for the payment of aid, assistance, and comprehensive reparation to victims of human rights violations or crimes.

Therein was the importance of this particular fund. While its management could undoubtedly have been improved, it met various priority needs of victims: the payment of travel expenses so that they could follow up on investigations and justice processes, the defrayment of emergency medical expenses, the financing of search procedures for missing persons, the cost of funeral expenses for victims of extrajudicial executions, and compensation as a component of the comprehensive damage reparation processes. As a consequence, the existence of the fund represented for many victims a significant tool in their day to day search for justice as well as an improvement in the precarious reality in which they have been thrown as victims of human rights violations. And although it must be recognized that its operation fell short of meeting the needs of the thousands of victims in the country, it was necessary, we insist, to critically evaluate the trust and to introduce measure to improve its functioning, not to eliminate it.

Recognizing the impact that the trust's elimination represents for thousands of families and the setback for rights won, the Centro Prodh filed an *amparo* (a constitutional challenge) lawsuit before the 13th District Administrative Court in Mexico City. In the *amparo* we argued that the elimination of Article 132, Section I of the General Victims Law contravened the principle of progressivity that Article 1 of the Mexican Constitution establishes in relation to human rights.

The principle of progressivity has two implications. First, rights must always be guaranteed to a greater extent (more resources, more coverage, more protection for people) and, second, there can be no regressivity, that is to say, it must not be possible for the State to reduce the spectrum of protection of rights.

For this reason, we argued in our complaint that by eliminating Article 132, Section I of the aforementioned law, an essential guarantee for the protection of the rights of victims in Mexico was reversed, ignoring the principle of progressiveness. The disappearance of the legal protection that ensured a minimum of resources for the care of victims constitutes a regressive measure that, consequently, should be declared unconstitutional by the Judicial Power.

In other words: the *amparo* does not seek to defend the trust as a financing mechanism, but rather to challenge the elimination of a norm that obliged the authorities to reserve a minimum, fixed, and annual budget allocation only for the attention to victims.

This amparo assumes even more importance when considered in the context of inaction by other actors. Although the National Commission on Human Rights (CNDH) expressed concerns regarding the then pending reforms to the General Victims Law, after the reform took effect, the CNDH did not take any action to push back against said reforms. This, despite having the legal competence to present a constitutional challenge.

The needs of victims that originally motivated the aforementioned laws and the now canceled trusts are as pressing as ever. Added to the financial challenges already detailed, the CEAV's ability to address these needs is further challenged by the fact that the Commission's head position has been unfilled since June 2020. Without a strong institutional framework and without the funds to respond immediately to the urgent needs of the victims, the current crisis will only deepen.

The persistence and magnitude of the human rights and violence crisis should oblige the authorities at all government levels, including those in the Judiciary, to prioritize the protection of victims and to guarantee their rights to receive aid, assistance, and integral reparation.

BACKSLIDING IN THE Federal Attorney General's Office

On April 29, 2021, the Chamber of Senators approved the new Law of the Attorney General's Office (Ley Orgánica de la Fiscalía General de la República, FGR), an initiative that —since it was first presented in October 2020— has set off alarms amongst victims' groups, human rights organizations, international organizations such as the UN and the IACHR, and even sectors of the federal government itself.

The initiative, sponsored by the official party, Morena, and endorsed by the Attorney General's Office (FGR), proposed various modifications that reversed the advances in relation to the design of the federal institution that victims, academics, human rights defenders and international organizations had managed to achieve over the past years. Above all, the proposal drew criticism for its move to dissociate itself, under an argument of new prosecutorial autonomy, from all the administrative mechanisms for coordination on human rights issues, including those designed for the specialized attention for disappeared persons, human rights defenders and journalists, women, victims of human trafficking, as well as children and adolescents.

Moreover, the proposal to reform the Organic Law, which had barely completed two years in operation, was not preceded by a broad and participatory evaluation of the operation of the prosecutor's office. Such an evaluation might have sought to build upon the success of the past two years and to advance the most important issues for the victims of serious human rights violations. Rather, the reform manifested the nostalgia that current authorities have for the previous, failed model of the former-Attorney General's Office (*la Procuraduría General de la República,* PGR), an office which bears much of the responsibility for the impunity that prevails in the country today.

The legislative debate on the reform generated an outcry from civil society. After many complaints and criticism were lodged, the legislators assured, and even celebrated, that civil society had been heard. However, this exercise, which was called an Open Parliament, fell far short of meeting the necessary standards of participation for such a process. And, although some of the most worrying contents of the proposed new legislation were eliminated, there is no way that this legislation could be considered a move towards

strengthening the prosecution offices nor a step towards establishing the criminal policies that a country with generalized impunity needs.

The promoters of the initiative highlighted the introduction of an addendum that "addresses the claims of the groups in search of disappeared relatives", but in reality, the new law included various measures that undermine the demands of such groups.

For example, the new law deepens the tendency to hand over investigative powers to militarized security institutions, like the National Guard. This, despite the fact that the National Guard's legal framework is currently being reviewed by the Mexican Supreme Court.

In addition, the law distorted mechanisms for control and accountability. Notably, the procedures for the appointment and removal of prosecutors were eliminated. This elimination represents a setback both for the quality and independence of investigations. Just as was the case in the previous model, the Senate-approved law proposes that the Attorney General be granted the power to freely appoint and remove the heads of the specialized prosecutor's offices.

In terms of the capacity to carry out complex and comprehensive investigations of criminal phenomena –a need of the highest order considering the various recommendations of international experts to address the reality marked by macro-criminality's expansion– the law scaled back several units, like those with the ability to conduct a contextual investigation.

Regarding the right of victims to actively participate in criminal investigations, the law eliminated the detailed wording of some rights and only incorporated some sections that consider their participation in a general way. This backsliding in the protection of victims' rights constitutes a violation of the principle of progressiveness in human rights, which is guaranteed by Article 1 of the Mexican Constitution.

In sum, despite the fact that some of the most worrying aspects of the law were eliminated, the law does not represent an advance that can be celebrated.

The insistence shown by the FGR throughout the legislative process to distance itself from its obligations in the investigation and search for disappeared persons is particularly worrying. If we add this to the limited, or non-existent, progress in the implementation of mechanisms such as the National Exhumations and Identification Program, the National Search Program, the National Forensic Data Bank, and the National Registry of Deceased and Unclaimed Persons, the institutional message that this reform represents is overwhelming negative.

Those in charge of ensuring justice, it would seem, continue to look back at failed approaches instead of looking forward towards a vision that could turn the prosecutor's offices into what Mexico and the many victims need.

Illustration: *Reporte Índigo*

CNDH: Lost Opportunities

After the turbulent, heavily-criticized, and legitimacy-reducing election of the current head of the National Human Rights Commission (CNDH, for its initials in Spanish), it was desirable for the CNDH to focus on strictly monitoring the most problematic issues for the human rights under the current administration: militarization, immigration policy, megaprojects in indigenous territories, the stigmatization of civil society, and the expansion of preventive detention, among others. However, the CNDH has not gone in this direction

To conduct an initial assessment of the current direction of the CNDH, we focus on the areas of activity typical of an institution of its type: issuing recommendations in cases, presenting unconstitutionality actions, expanding the human rights culture through a consistent social communication policy, and maintaining internal governance that is minimally consistent with the values it defends.

Using this method, we found that, during its first year, the current CNDH administration issued more than 60 recommendations, eight of which concerned serious human rights violations. Although numerically this exercise is not far off from what has been carried out by the CNDH in the past (particularly when placed compared what was done in first year of the previous administration

–the year that is most methodologically sound to compare), two issues attract attention.

First, the vast majority of the recommendations (more than 40) have been issued for human rights violations committed during the previous six-year presidential term. Although this could be justifiable given that it is the first year of exercise, if this trend is not reversed to focus on the current administration, it would indicate that we are facing complacency and a non-critical approach to current federal authorities.

The second issue identified is that the average time that elapses between a complaint and a recommendation has not been reduced (it is almost 30 months). There are notable exceptions; however, these seem to be due to deliberate biases. For example, the current CNDH issued recommendations against the Executive Commission for Attention to Victims (CEAV, for its initials in Spanish) in less than three months, while complaints against the National Guard are not resolved with the same haste. We have confirmed this lag in recommendations from our daily work accompanying victims: for example, there have been no advances in the investigations of cases of sexual torture of female victims, a case that we have accompanied since 2018.

Regarding the presentation of unconstitutionality actions before the Supreme Court, the numbers are similar to previous CNDH administrations. During the first year, around 90 actions were filed to exercise this means of constitutional control. However, in our qualitative analysis, again, biases come to light: only one of these actions was against federal legislation, the Federal Copyright Law. It is worth nothing that after its first year, the period of our analysis here, CNDH also filed an action before the Supreme Court against the reforms to the National Code of Criminal Procedures, which broadens the bases for informal preventive detention. Here it is essential to highlight important omissions: for example, the CNDH did not challenge the Presidential Agreement by which the militarization of security was deepened, despite the fact that in a progressive interpretation of its powers it could do so. Furthermore, it has not announced unconstitutionality action against the regressive legal reforms, such as those made to the General Victims Law, which controversially eliminates its public trust.

Regarding social communication, between November 2019 and September 2020 the CNDH issued more than 300 press bulletins. Here again, although the numbers do not reflect a decrease in activity, qualitatively there are deficiencies that are notable in terms of topics, in content, and, again, in omissions. In relation to topics covered, CNDH has dedicated an unusual number of communications to internal conflicts and problems with its personnel, notably not with respect to those who already formed part of the institution, but with respect to those who entered in this period. Regarding content and omissions, CNDH's communications related to cases of serious human rights violations –here we refer to executions, no less– committed by military personnel during this administration, have been regrettable. For example, the CNDH –against all relevant international standards– has requested that SEDENA (the armed forced secretariat) itself to investigate the only case in which it has speak out (related to a case of an execution in Nuevo Laredo). While in other cases of public importance regarding the actions of the National Guard (take, for example, the human rights issues surrounding the demonstrations in La Boquilla, Chihuahua) the CNDH has been silent. These omissions become even more grave when placed in the context of deepening militarization that Mexico is experiencing and the fact that CNDH staff who were in charge of the main offices at the beginning of the administration have publicly denounced that the current CNDH deliberately avoids critical accusations that would implicate the Armed Forces and the National Guard.

Turning to the question of internal governance, the CNDH remains in an irregular situation. CNDH's Advisory Council has not yet been fully staffed, despite the fact that this supervisory body is provided for both in the Constitution and the CNDH's organic law, with relevant powers for its conduct defined therein. Currently, only three people make up the Council after six of its members resigned.

In sum, if CNDH's level of activity has been maintained in quantitative terms, it is clear that there has been a clear decline in CNDH's activities when viewed through a qualitative lens. This decline in the quality of CNDH's activities, however,

is not addressed by proposed reforms to the CNDH's practice and regulations that the Ombudsperson is currently promoting.

For an institution that had not fully exercised its autonomy (although the previous incumbent had admittedly made some efforts to do so) and with serious transparency problems, it urgently needs to improve its performance: its relationship with the victims needs to be closer; their investigative capabilities need to be strengthened; their records management need to be less bureaucratic; and its team of heads of the main offices could improve in both number and diversity. The attention to especially complex cases needs to be improved too, so as not to repeat the mistakes made in the previous administration, particularly in cases like Ayotzinapa.

However, the proposals of the current Ombudsperson have not addressed these issues. Promoting austerity –which has been the main focus of its proposals– is fundamental; however, austerity by itself would not improve the attention to victims. To the contrary, it could negatively impact such attention if the cuts are abrupt. Furthermore, proposing reforms to change the name of the institution (another of the currently debated reforms) may generate publicity, but it certainly will not shore up its autonomy. Other long-pending legal reforms would. Such reforms include eliminating the possibility of the Ombudsperson's reelection for a second term. Finally, suggesting modifications to make recommendations binding may be attractive in discourse, but in practice it would distort the institution and generate extensive litigation.

Thus, truly substantive issues –such as improving the management of files and investigative capacities, ensuring a strategic approach to the most urgent issues relating to serious violations like disappearances, torture, executions, the protection of indigenous territorial rights, and innovating in the follow-up of recommendations, including general ones– have been ignored.

It is not as if we have lost the CNDH as a defender of human rights and as a counterweight; since, in reality, it has never fully fulfilled those functions. But we are losing what was redeemable in the institution. And, above all, the historical opportunity to make it a truly relevant and useful body for victims. The negative influence that this weakening at a federal level might have on the already-weak state human rights commissions, which are normally subordinate to the state governors, is doubly worrying.

Photo: *Cuartoscuro*

Photo: A dónde van los desaparecidos

THE DISAPPEARANCE CRISIS: A Permanent Debt

According to the most recent figures, there are more than 83,000 "disappeared" people in Mexico. For years, collectives composed of family of disappeared persons, have denounced the irregularities, slowness, and lack of institutional coordination both in search processes for missing individuals and in forensic identification processes. It remains unclear how many unidentified remains correspond to individuals whose loved ones continue searching for them. Further, it is alarmingly common that the few advances that occur in an investigation are generated through contributions made by the families themselves

On November 17, 2017, the General Law on Forced Disappearance of Persons, Disappearance by Individuals and the National Search System was published as a result of the advocacy of the families of disappeared persons who have demanded truth and justice for years.

The Law ordered the creation of the National Search System (SNBP, for its initials in Spanish), as well as a new National Registry of Missing Persons[1], in addition to—among other tools—a National Bank of Forensic Data, a National Registry of Unidentified and Unclaimed Persons, a National Registry of Graves, an Amber Alert System, and the Homologated Search Protocol. It also ordered the creation of a National Search Commission and a National Search Plan for Disappeared Persons (pnbpd, for its initials in

1. CNB. Registro Nacional de Personas Desaparecidas y No Localizadas [19/02/21]. https://bit.ly/39tS1VI

Spanish), as well as a National Citizen Council made up of specialists, relatives of victims, and human rights defenders, with the purpose of advising the National Search System.

The existence of the SNBP implies that each federative entity must create a "mirror system" by implementing a local law on disappearance as well as establishing a local search commission, a local registry of missing persons, a local forensic system, a citizen council, and a specialized prosecutor's office for cases of disappearances.

Precisely due to the call for creation of numerous institutions, tools, and mechanisms, coordination between the various authorities involved in the processes of search, investigation, and identification is essential. The slow progress in the installation and strengthening of the search commissions, their lack of legal facility to carry out search actions that require judicial authorization, and the monopoly of the Public Ministry in forensic matters has signified that important aspects of the search for disappeared persons remains in the hands of the prosecutors. Therefore, progress in the cases depends on the indispensable collaboration between the search commissions and the specialized prosecutors.

On March 24, 2019, the SNBP was instated, after having been formally inaugurated in October 2018 without any real effect. On May 24, 2019, the creation of regional search plans was announced and the implementation of the First National Forensic Diagnosis was announced to investigate the current state of forensic institutes in the country.

In May 2019, the first National Registry of Clandestine Graves and Mass Graves was presented.

On June 24, 2019, the first evaluation of the System was carried out and the creation of 5 regional forensic institutions in the states of Coahuila, Nuevo León, Sonora, Veracruz and in Mexico City was announced. The construction of 15 forensic cemeteries in Veracruz, Sinaloa, Jalisco, Guerrero, Michoacán, Baja California, Colima, Nayarit, and Tamaulipas was also revealed.

On August 30, 2019, within the framework of the International Day of the Victims of Enforced Disappearances, it was announced that a legislative initiative would be presented as soon as possible to build the Extraordinary Forensic Mechanism.

Finally, on December 7, 2019, the CNB presented an online platform to report missing persons, which is updated permanently and allows any person or authority to report a disappearance to activate search mechanisms in a coordinated manner. That same month, the creation of the Extraordinary Forensic Identification Mechanism was approved.

In July 2020, the Ministry of the Interior (Segob, for its initials in Spanish) and CNBP presented a platform with data from the National Registry of Missing Persons, but did not release the complete database nor did it publish the methodology employed.

In October 2020, Segob published the Approved Protocol for the Search for Missing Persons. The Protocol was approved by the SNBP by a qualified majority of votes in favor. However, the Attorney General of the Republic and the National Conference for the Procurement of Justice abstained from the vote under the pretext of the prosecutorial autonomy, a gesture not only of disinterest, but also of resistance to being bound by said legal instrument.

Between June and December 2020, just 12 states of the Republic had in effect a local law, 31 out of 32 states had a local search commission, 25 of them had a Chief, 24 had a prosecutor's office specialized in disappearances, 8 had a Law for the Reporting of Missing Persons, and 7 had a state citizen council.

To date, Mexico remains without a National Bank of Forensic Data, a National Registry of Unidentified and Unclaimed Persons, a National Registry of Graves, and a National Search Plan for Disappeared Persons. The National Registry of Missing Persons continues to lack full transparency.

The most serious issue of all, however, is, without doubt, that the phenomenon disappearances has not been eradicated: there were 9,230 disappearances in 2019; 8,345 in 2020; and 1,947 as of May 7, 2021.

In comparison to previous six-year presidential terms, this administration has made some progress in the implementation of the law and responding to demands of the collectives. For example, the appointments of those responsible for the search actions has been positive. However, there are still enormous debts to be paid with families:

guaranteeing their participation in the processes -both legislative and in the searches for missing individuals-, finalizing the creation of the entities dedicated to disappearances, making them truly operational, and providing them with the necessary human and financial resources. Above all, it is essential that there be coordination between the authorities of the Federation and the states, including the Prosecutor's Offices, so that the crisis of disappearances is faced wholistically by the State and not through isolated efforts.

The Mexican State must fulfill, with all responsibility implied therein, its urgent commitment to locate disappeared persons and, in so doing, put an end to the uncertainty that tortures the thousands of families who continue to search for their loved ones and who long to know the truth, whatever that might be.

Photo: Reuters | E. Garrido

Institutions for the Protection for Human Rights that Have Been Weakened

Supreme Court of Justice of the Nation (SCJN)

- Designation of unsuitable profiles
- Reform that extends the term of the Judge serving as President as the chair of the SCJN and the Council of the Federal Judiciary.

National Commission for Human Rights (CNDH)

- Chaotic election process for the head of the Commission
- Deficient protection work.
- Increasing lack of autonomy
- Continued investigative practices from the past

Executive Commission for Attention to Victims (CEAV)

- Withdrawal of the victims' aid fund
- Lack of Commission's head for almost a year

Office of the Attorney General of the Republic (FGR)

- Return to a failed model through reform of the FGR Organic Law
- Failure to root out corrupt staff
- Continued investigative practices from the past

National Council to Prevent Discrimination (CONAPRED)

- Lack of Council's head for nearly one year
- Threat of integration in Segob

National Institute of Transparency, Access to Information and Protection of Personal Data (INAI)

- Threats to dismantle the institute or to integrate it under the Ministry of the Public Function
- Questioning their work

National System for the Comprehensive Protection of Girls, Boys and Adolescents (SIPINNA)

- Threat to dismantle the system

Federal Electoral Institute (IFE)

- Threats to dismantle the institute

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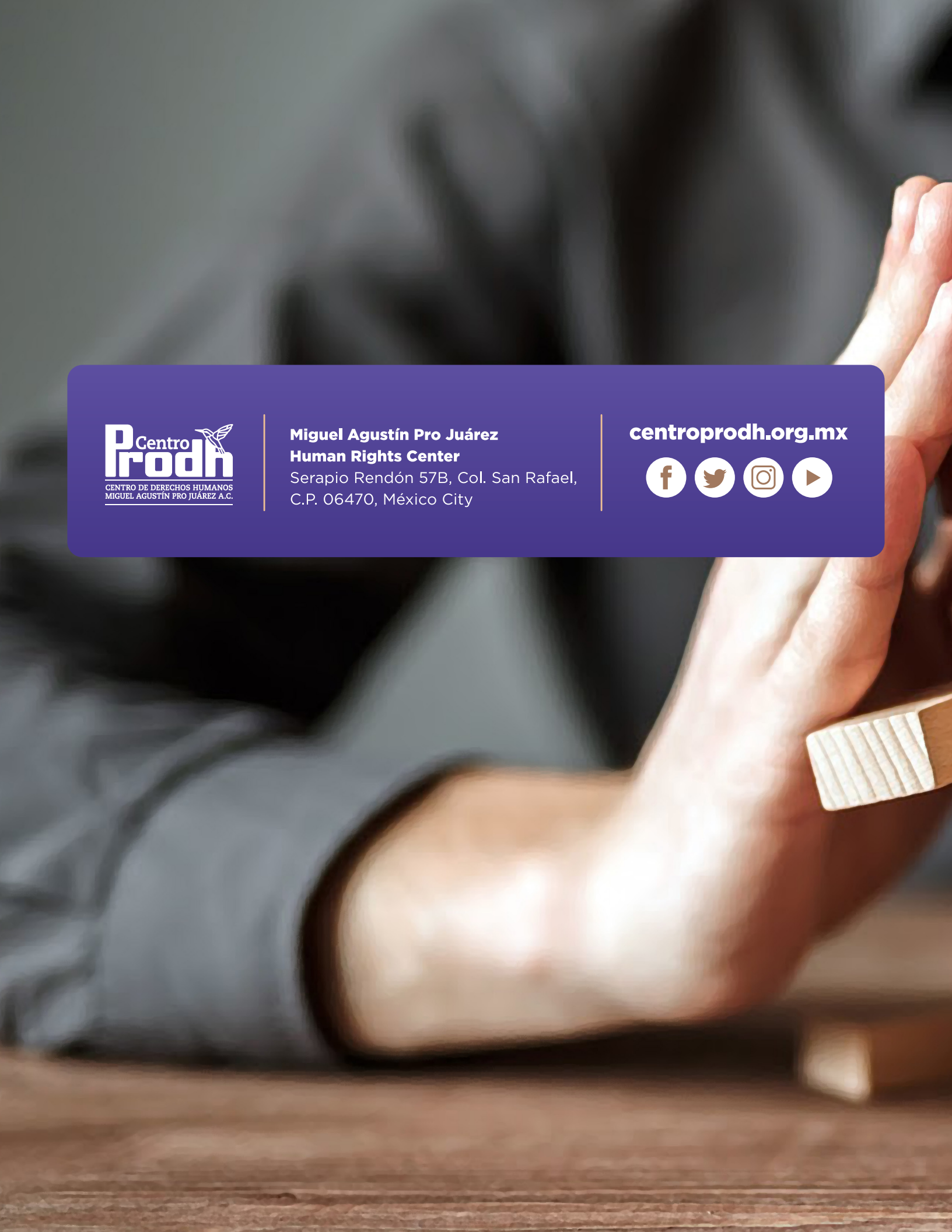

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