



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

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

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In the pre-electoral atmosphere, human rights issues are in the last place

Mexicans are currently living a pre-electoral atmosphere that is permeating their daily life. The upcoming federal elections in 2006 are already monopolising the front pages of newspapers and magazines. The internal divisions and the constant competition between members of the three main political parties, PAN, PRI and PRD, as well outside of the parties themselves, has generated constant attention to the presidential candidatures. This is particularly evident regarding the political confrontation between President Fox and Mexico City's Mayor, Andrés Manuel López Obrador, who is facing a kind of impeachment process supported by Fox. Registration for presidential candidates will take place in October 2005, meaning that primary elections within the parties will soon occur.

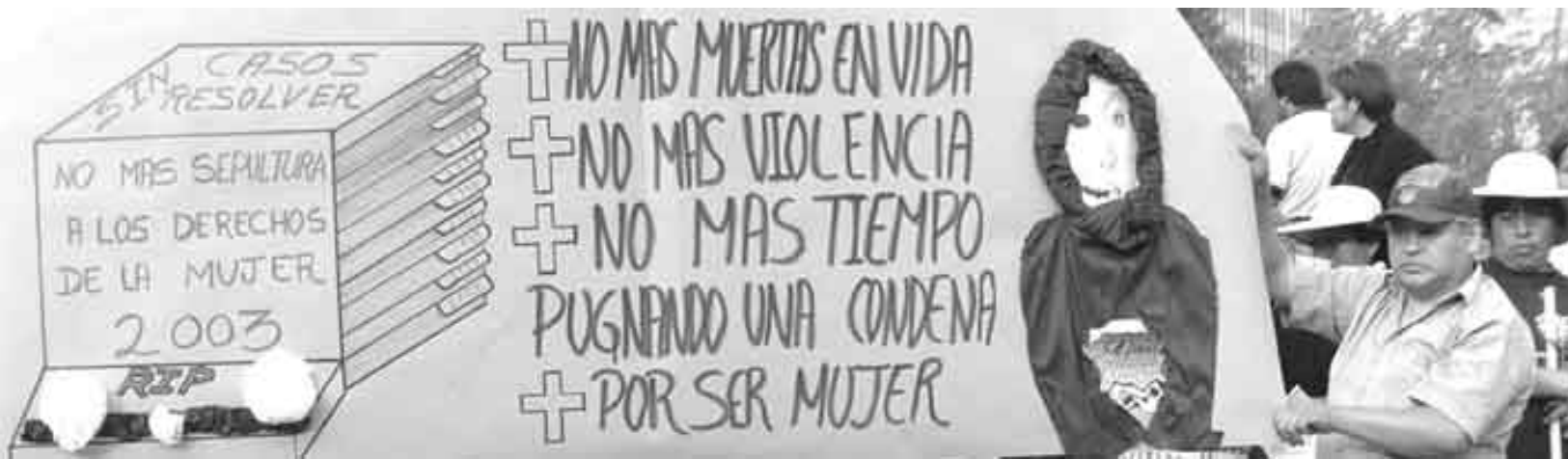
Unfortunately for the human rights movement, most human rights issues are not a high topic in the current political agenda. Even more concerning is the fact that the only issue related to human rights that may be addressed

by politicians during their electoral campaign appears to be the issue of public/national security. Presently, as several articles in this edition of *Focus* illustrate, this issue has been dealt with both locally and nationally through a hard-line approach and the militarisation of police forces, both of which have been the source of much concern for national and international human rights organisations. Likewise, given that the focus, even within the current administration, is on 2006, the chances of true policy changes in the area of human rights during 2005 appear stark. This is even the case regarding the National Human Rights Programme, whose implementation should be revised as it fails to address the structural changes needed in order to improve the human rights situation in the country and where a true commitment from the government is needed in order to produce concrete results in areas such as militarisation, indigenous rights, violence against women, labour rights and the general administration of justice in the country, all of which are addressed in this edition of *Focus*.

State Agents and Violence Against Women in Mexico

A life free from violence is one of the most important aspects of the right to life. Violence against women has its roots in the historical unequal treatment given to women, which cuts across social, economic, racial, life stage, disability, sexual preference, and cultural contexts. The deficiencies of governments and their institutions to guarantee, protect and promote the human rights of women have been highlighted by the systematic human rights violations against the right to life free from violence. In this regard, the Mexican government is no exception.

The UN Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women. In the case of the UN Convention, discrimination is considered as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis



Demonstration by Ciudad Juárez victims' families and civil society organisations, Mexico city, 2004 / Photo: Centre Prodh Archive / Tania Gómez

of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (art. 1)

In this regard, the following will present some cases of violence against women that have been committed either by State agents in an active way through the abuse of power, or through inaction by the State; all of them have implied sexual abuse and discrimination.

Ciudad Juarez & murdered women

The rapes, murders, and disappearances of women of Ciudad Juárez in the state of Chihuahua are the most paradigmatic and high profile cases of violence against women in Mexico. Most victims were from low-income families and worked in local "maquiladoras" (export oriented assembly factories). The cases widely attracted the international community's attention because of their systematic nature running over 10 years. Despite the international attention given to the cases and the several recommendations made by different UN and OAS human rights mechanisms, they remain unsolved (see *Focus Issue 16*, Fall 2003 for additional information on these cases). Since the beginning of these incidents in Ciudad Juárez, the authorities have not fully investigated the disappearances and murders, leaving the impression that they view these women as being young and with no social status and therefore do not place importance on carrying out the investigations.

Although there is no agreement on the exact figures of the raped and murdered women in Ciudad Juárez, in its latest report on the

cases, the UN Committee on the Elimination and Discrimination against Women (CEDAW) states, "... most official sources agree that [there have been] over 320 [murdered women] in Ciudad Juárez (civil society organizations ... maintain that there are 359 victims); one third of them have been brutally raped" (CEDAW/C/2005/OP.8/MEXICO, pars. 61).

In this report, the CEDAW concluded that the rapes and murders in Ciudad Juarez "...constitute grave and systematic violations of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, as well as of Recommendation No. 19 of the CEDAW and the UN Declaration on the Elimination of Violence against Women" (CEDAW op. cit. par. 259). This is particularly worrying because "...the methods used in the murders and disappearances perpetrated in Ciudad Juárez over the past decade have been used again in recent years in Chihuahua City and apparently in other parts of Mexico...", meaning that these violations are not isolated or sporadic but rather that they are "...founded in a culture of violence and discrimination that is based on women's alleged inferiority, a situation that has resulted in impunity" (CEDAW op. cit. par. 261).

The CEDAW recommends the Mexican government, amongst other things to:

- "Incorporate a gender perspective into all investigations, polices to prevent and combat violence, and programmes to restore the social fabric... with a view to eliminating discrimination and establishing gender equality."

- Strengthen coordination between the authorities and participation at the Federal

and State levels and together with the civil society.

- Consider providing the federal authorities with jurisdiction to investigate these cases.
- "Investigate thoroughly and punish the negligence and complicity of public authorities...and the fabrication of confessions under torture."
- Investigate and punish public officials for their complicity in or tolerance of persecution, harassment or threats directed against victims' relatives, members of organizations representing them, and other persons involved in defending them.
- Establish an emergency mechanism to treat new cases of women's disappearances within the following 24 hours (CEDAW, op. cit. pars. 263-286).

In regards to the actions of the Mexican State, Guadalupe Morfín, the Special Commissioner for the cases, has faced difficulties in doing her job because the Federal government has not provided the necessary financial and political support nor clarity as to how the Commission that she runs will order, coordinate and provide monitoring to the actions of the diverse offices of the government.

Additionally, although María López Urbina, the Special Prosecutor for Attention to Crimes Related to the Homicides of Women in Ciudad Juárez, has sufficient funding, she has very limited powers and the work of the Special Prosecutor's Office has produced only limited results. Recently, López Urbina made public a report on 70% of the 323 cases under her investigation. She concluded in this report that the motivation in 84 of these crimes was sexual and said that up to 190 current public servants (or ex public servants) may be

criminally or administratively responsible for failures during the investigation. Families and members of civil society were said to be disappointed with this report (*La Jornada*, 1 February 2005). On 22 February 2005, López Urbina announced that a fund had been created for the families of the disappeared and murder women in Ciudad Juárez, which is mostly a contribution from the Federal government. So far this fund amounts to 61 million pesos (about \$5,500,000 million dollars) but there has yet to be a decision on how to distribute this money (*El Universal*, 22 February 2005).

Valentina Rosendo, an indigenous woman abused by members of the military

In Mexico, and particularly in the state of Guerrero, the military presence in indigenous communities has caused significant human rights violations, especially amongst women. Military operations in Guerrero have been present for decades and currently their main focus is to search and combat drug-trafficking operations in remote mountainous areas. However, according to Amnesty International's report *Violence Against Indigenous Women and Military Injustice*, "these operations are also linked to gathering intelligence on indigenous communities and identifying what the military perceive to be subversive elements" (AI, AMR 41/033/2004). Since the beginning of "dirty war" in the 1960s, Guerrero has been identified as a "foco rojo", i.e. a hot spot or an area of subversive activities in the country.

Valentina Rosendo Cantú, a 17-year-old indigenous woman of the Me'phaa (Tlapaneca) indigenous group and mother of a three-month-old baby boy, was approached in the afternoon of 16 February 2002, by eight soldiers from the Forty First Infantry Battalion as she was washing clothes near her home in the village of Barranca Bejuco, Acatepec municipality. Two of the soldiers walked towards her and asked her if she had seen some "hooded men" (*encapuchados*) around. She was also questioned about a list of 11 names of

different individuals and shown a photograph. When she denied knowing anything about these individuals, one of the men pointed a gun at her and threatened to shoot. Then, he hit her in the stomach with the butt of his rifle; afterwards, one of the soldiers pulled her by the hair and questioned her further. The soldiers warned her that if she did not provide them with more information, they would kill everyone in the village. Then, two of the soldiers raped her while the other six watched.

Valentina immediately went to the competent authorities in order to officially report the rape and request medical attention as well as an official certification of the rape. Authorities denied her this service, as, they argued, they did not want any trouble with the Army and did not have the



VALENTINA ROSENDO CANTÚ
Indigenous Tlapaneca woman,
victim of rape by military members
Photo: Reuters / Henry Romero

appropriate equipment. Upon receiving Valentina's complaint regarding the rape, the civil authorities initially declared themselves incompetent and two months after the civil authorities had received the complaint, military authorities assumed the investigation. This goes against several recommendations for the Mexican government made by the Inter-American Commission, the representatives of the UN thematic mandates, including the Special Rapporteur on torture, the Special

Rapporteur on extrajudicial executions, the Working Group on Arbitrary Detention and the Special Rapporteur on the Independence of judges and lawyers which state that crimes alleged to be committed by the military against civilians should be investigated by civilian authorities.

Besides the psychological trauma due to the rape and poor medical treatment she received from the authorities, Valentina contracted a serious venereal illness, which prevents her from getting pregnant. Additionally, her husband and her own position within their community have been affected.

Valentina's defence has presented several appeals against the military jurisdiction alleging the unconstitutionality of this procedure and requesting the civil judicial authorities to re-assume the investigation, but they have not been successful.

This case has been presented to the IACHR by the *Centro de Derechos Humanos de la Montaña "Tlachinollan"* and the Miguel Agustín Pro Juárez Human Rights Centre. Currently, Valentina's case and the case of other indigenous women in Mexico who have been victims of human rights violation are part of Amnesty International's campaign "Stop Violence Against Women."

False charges, the case of Nadia Zepeda

Mexico City's police arbitrarily detained 18 year-old Nadia Zepeda on 23 January 2003, while she was in the company of two male friends. Nadia and her two friends were seized for more than two hours by police officers and Nadia was physically and psychologically abused when the officials tried to rape her and she defended herself. Once she was in custody, Nadia was raped and sexually abused by the members of the police and she was constantly beaten and kicked by the officers and threatened of a collective rape.

Subsequently, Nadia was charged with selling drugs. While she was detained, she was held incommunicado and did not have the right to make a telephone call and receive legal advice. Furthermore, she was forced by the officials to accept that her injuries were old injuries that did not originate from her detention. In contrast, her two friends were freed without charges. It is believed that this unjust treatment was related to Nadia's gender and therefore a discriminatory act. In June 2004, 200 signatories, members of national and international human rights organisations and individuals, called for her release. This communication accused the police of discrimination, abuse of authority, and violence against a woman.

In March 2004, the Human Rights Commission of the Federal District (*Comisión de Derechos Humanos del Distrito Federal*), following an investigation, found that there were human rights violations committed against Nadia by the police and requested that the government begin an investigation into the allegations of mistreatment and false accusations against Nadia. However, despite the fact that the investigation was full of irregularities and inconsistencies and that the main

evidence against her was the drugs that were planted by the officials, Nadia was sentenced to five years in prison on 7 May 2004. The Centre Prodh is currently responsible for the legal defence of this case and is working on strengthening two preliminary investigations against the police officers involved in the abuses, regarding sex crimes and for crimes committed by public servants, in order to provide additional evidence for the case and request the recognition of Nadia's innocence before the Supreme Court.

Conclusions

These cases, amongst others, expose the impunity that persists in the police corps of Mexico, as well as the vulnerability of women involved in situations of this type. It is also clear that women are more likely to become victims of the abuse of authority.

In sum, the expressions of violence against women in Mexico include both discrimination as well as sexual violence. Sexual violence has been classified as a tactic of repression and torture used by governments against women in different occasions. The lack of due diligence and omissions observed in the clarification of

the crimes in Ciudad Juárez and the sanctioning of those responsible, as well as the abuse of power by the military and civil authorities in the cases of Valentina Rosendo and Nadia Zepeda, reflect the little importance that Mexican authorities have given to issues related to violence committed against women. The predominant impunity of such crimes sends the message that this type of violence is tolerated not only by law enforcement officials but also by the government in general, thereby encouraging its perpetration. In this regard it should be noted that the National Human Rights Programme limits its lines of action in the area on "Violence against women" to issues of domestic violence and the crimes against women in Ciudad Juárez, without including any actions to address violence against women committed by State agents in general. This highlights that the fulfilment of the international obligations and the recommendations made by the regional and international human rights mechanisms in order to protect women, especially those belonging to vulnerable social sectors, such as low-income or indigenous people, remains a pending issue for the Mexican government.

The Mexican National Human Rights Programme has yet to Prove its Efficiency

As planned according to the Technical Cooperation Agreement signed between the UN Office of the High Commissioner for Human Rights (OHCHR) and the Mexican government, President Vicente Fox presented the National Human Rights Programme (NHRP) on 10 December 2004. This was done exactly a year from the issuing of the Assessment on the Human Rights Situation in Mexico (*Diagnóstico de la Situación de los Derechos Humanos en México*) by the representative of the OHCHR in Mexico, Mr. Anders Kompass. The 2003 Assessment contains thirty-two general recommendations and hundreds of specific ones related to political and civil rights; economic, social and cultural rights; women's rights; the rights of indigenous people and the rights of vulnerable people and those who are discriminated against. The Assessment's recommendations should have been incorporated into the NHRP.

Weak basis

As reported in *Focus* (Spring 2004), civil society's participation was limited during the design and elaboration process of the NHRP. The expectations of participation in the elaboration process of the NHRP, as well as the possibilities to set rules of dialogue were not fulfilled, contrary to what had happened in the elaboration of the Assessment.

In addition, the federal government did not sufficiently involve the different political forces mainly opposition parties that rule the Congress, in the process. Therefore, the NHRP does not represent a commitment by the State, as it lacks support from the Legislative and Judicial powers.

For the NHRP to prevail, important changes should be made during 2005 and 2006. This should be done particularly since the National Planning Law (*Ley Nacional de Planeación*) does not allow any federal programme implemented during the

mandate of one President to continue after the election of his/her successor. This means that unless a reform of this law is endeavoured and negotiated with the opposition forces, the Programme's implementation will end in 2006.

However, the current political situation in Mexico does not leave much room to manoeuvre. Indeed, the 2006 presidential elections process –which has already informally begun– may threaten the continuity of the NHRP unless it becomes an important campaigning issue for the political parties. This seems unlikely as public security issues appear to constitute the core of the political debate.

Failure to address structural problems

In regards to the content of the NHRP, it is important to highlight that most of its proposed actions are in fact part of the ordinary administrative work of the government rather than being new activities

that would create a comprehensive public policy in the area of human rights. This is unfortunate given that a new tool such as the NHRP, done in collaboration with the UN, should be implemented to help the State to change its approach to human rights, transforming the way it creates and promotes policies, considering as a basis the highest international standards and the State's obligations in the area of human rights, rather than simply superficial changes.

Unfortunately, the NHRP in its present form is far from establishing an efficient policy to revert the most persistent human rights problems in Mexico. These problems include:

- The essentially inquisitive system, the lack of trustworthy and scientific techniques, and deficient investigations, which together with the excessive power of the ministerial authorities, allow for the persistence of arbitrary detentions, torture, the lack of adequate defence and violations of due process, which are permitted by the judicial authorities. Impunity is also reflected in cases such as the murders and the enforced disappearances of women in Ciudad Juárez, where the victims' families are still awaiting justice.
- Enforced disappearance continues to be used as an investigation method and to pursue crimes in states like Guerrero. Although Mexico ratified the Inter-American Convention on Forced Disappearances of Persons, this is categorised as crime only in the Federal Penal Code, which applies to federal agents only, and the local penal codes of the states of Oaxaca, Chiapas and the Federal District.
- The militarisation of civil spaces continues to be worrying. The legalisation and institutionalisation of the diverse actions by the Army has increased, such as the Army's participation in public security tasks and in the *elite* police forces; in the investigation of crimes, where even the Federal Attorney General is a member of the Army; and recently, in prison security.
- The supremacy of military jurisdiction in cases of human rights violations perpetuated by members of the Army continues. Cases reported to the authorities are systematically assumed by the Military Attorney General's Office, or sent by civil authorities to the military authorities, resulting in a failure to investigate the allegations and the lack of access to justice for the victims. It also guarantees that those responsible for these violations are not punished.

The Constitutional reform bill on human rights

In several cases, the NHRP refers to law bills presented by the Executive as part of the NHRP and the government has based its lines of action on these bills. The NHRP assumes the approval of such bills on the same terms as they were presented. However, their approval will depend on the good will of the Revolutionary Institutional Party (*Partido Revolucionario Institucional*, PRI), which is the political force with the majority in Congress.

One of these law bills is the constitutional reform bill on human rights submitted on 4 May 2004 by the Executive, presented in the NHRP as the pillar of the "strategic line" titled "Promoting constitutional reforms, as well as secondary laws, in order to guarantee the recognition and protection of human rights".

This bill does represent progress regarding human rights issues in Mexico, for example, it eliminates the death penalty from the Constitution (articles 14). However, the disagreements between the Executive and non-governmental organisations regarding the content of the proposed constitutional reform are not acknowledged in the NHRP and represent important differences that should be pointed out.

For example, as mentioned previously in *Focus* (Spring 2004), in the framework of the Working Group on State Reform of the Commission on Governmental Policies in the Area of Human Rights (*Comisión de Política Gubernamental en Materia de Derechos Humanos*), after more than a year of work, an agreement was reached between the government and civil society organisations before the proposed reform was presented in May 2004. One of these agreements was that torture and the death penalty would both be prohibited. However, the initiative presented by the Executive substantially changed the content of the reform that had been agreed upon in the Working Group and no mention was made to prohibit torture. Likewise, the reform includes human rights terminology in different articles but upon a closer examination it is evident that this reform does not guarantee that a constitutional status will be granted to the international human rights instruments. For example, the reform of article 103 would allow federal tribunals to intervene in any controversies that arise regarding laws or acts of the

authorities that violate individual guarantees or human rights. Although this proposed reform, as well as that for article 1 of the Constitution mention the term "human rights", they do not included references such as: "the human rights contained in the international treaties ratified by the Mexican State". Therefore –in a system with a constitutional tradition such as the Mexican where local states openly disregard international treaties- the effective application of these commitments will be postponed.

This reform also fails to mention the promotion, defence and protection of human rights as the main normative principal of the foreign affairs of this government. Indeed, article 89, under the title Faculties of the Executive, only mentions the "protection of human rights", reducing to a minimum the obligation of the State concerning human rights.

Flaws in the programme

The Programme also has blatant flaws including the fact that it does not include actions to address the instrumental recommendation number 32 of the Assessment. This recommendation suggests that a group of experts should be formed with the specific mission to elaborate an independent annual report dealing with the state of the Nation with the support of the UN system in Mexico. This report should contain an evaluation of how the issues included in the 2003 Assessment have evolved.

In regards to labour issues, there is also no certainty that the right to join or form trade unions will finally be guaranteed by the NHRP because this point is not approached straightforwardly in the document. In the meantime, the Ministry of Labour has promoted a reform that will clearly be regressive on labour rights issues.

Moreover on the indigenous issue, despite the fact that one of the recommendations in the 2003 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, as well as in the 2003 Assessment, was to contemplate the revision of the 2001 Constitutional reform on indigenous peoples' rights, this is not included in the NHRP. In addition, under the environment and sustainable development sections, there are proposed actions that may actually be regressive for the indigenous people, such as establishing natural reserves without

their consent as a way of dispossessing them of their land and to take advantage of natural resources. The progressive militarisation of indigenous zones is also not mentioned as a problem.

Conclusion

The main human rights advances of the Fox administration have been at the foreign policy level and its openness on the issue. Nevertheless, nationally Fox's most important initiative on human rights, the NHRP, does not respond to the recommendations issued by the UN human

rights mechanisms, nor to those included in the OHCHR Assessment. In light of this, it will be necessary for the government to revise the Programme's implementation and demonstrate real commitment in this process. Additionally, the government should request the expansion of the OHCHR's mandate in Mexico, in order to monitor and provide follow-up actions to the recommendations that, as a whole, would strengthen the NHRP.

In spite of all of the work that was done in the process prior to the elaboration of the NHRP, including the elaboration of the

Assessment, and the twelve months that were used to finish the Programme, the final result is simply a document that, without a substantial revision and efforts by the government, will have little applicability and chances of implementation.

*The full text of the NHRP is available at: <http://www.gobernacion.gob.mx/comisionndh>

Lynchings: A Clear Symptom of the Government's Failure to Administer Justice

In what continues to be a concerning situation in Mexico, several incidences of lynchings have occurred over the last few months. One of the cases that has stood out took place on 23 November 2004 in San Juan Ixtayopan, in the southern municipality of Tláhuac in Mexico City. In this case, three plain-clothes federal officers from the Federal Preventive Police (*Policía Federal Preventiva*, PFP) were lynched by a mob; two of them were burned alive and the one surviving was critically injured. About 300 people attacked these individuals after they were seen taking photos at a primary school where two children had recently gone missing. The rumour amongst the crowd was that they were kidnappers (BBC news, 6 December 2004).

The initial version of the incident was that the officers were investigating drug-trafficking operations in the area. Then there were statements by General Macedo de la Concha, the Federal Attorney General, claiming that these police officers were in fact investigating rebel groups working in the area. In any case, it is evident that the Ministry of Public Security (*Secretaría de Seguridad Pública*, SPP) sent these officers on this mission without informing the local authorities about the investigation. In addition, the officers were working unarmed, with no back up and they did not have the training necessary to carry out this sort of investigation. It appears that they were advised that if they were discovered they would have to face the situation on their own (*La Jornada*, 1 February 2005).

Political implications

This particular case of lynching has been widely covered by the media nationally

and internationally, not only because the victims were federal officers, but also because the lynching was televised live nationally and due to the subsequent political implications. President Fox, using his faculties over the Head of the Government of Mexico City, Andrés Manuel López Obrador, (an aspirant candidate for the presidency from the PRD), fired the Minister of Public Security of Mexico City, Marcelo Ebrard, shortly after the lynching. President Fox's reason to dismiss Ebrard was the fact that his police forces took several hours to get to the scene of the lynching, specifically stating that "these measures have the clear objective of contributing to strengthening public order and defeating impunity" (BBC news, 6 December 2004). Indeed, as most people could witness, the authorities were negligent in their actions since they did not intervene to stop the events in a timely manner. The press arrived at the site at 7pm and it was not until 9pm that the authorities intervened, despite the fact that the closest PFP facilities were just 20 minutes away from the site. The police at this office claim to have received orders to not intervene in the events (*Proceso*, 28 November 2004).

Ebrard's dismissal ignited another confrontation between López Obrador and President Fox (*La Jornada*, 1 February 2005) and Fox's action has been interpreted as a sign of power from the president over López Obrador. Although the head of the SPP, Martín Huerta –President Fox's close friend– also appears to be responsible for the events, he has not yet been dismissed. Currently a commission of the local Legislative Assembly is investigating these lynchings and requested that Huerta present a report on the event (*La Jornada*, 3

December 2004). The Federal Attorney General Office, (*Procuraduría General de la República*, PGR) is also investigating the events (*La Jornada*, 3 February 2005). In light of this it appears that the case has been an excuse for mutual blaming between the federal and local authorities.

False accusations, public outrage and political pressure

To date 29 people have been accused of qualified murder and have been imprisoned in relation to the lynchings in San Juan Ixtayopan. Nevertheless, there have been allegations that these accusations and detentions are more the result of political pressure than of a thorough investigation into the events. These allegations are not surprising taking into account that President Fox publicly praised the detention of these 29 individuals and assured that more people will be detained (*La Jornada*, 1 December 2004). Most of the accused claim their innocence and apparently the majority have proof of this fact, a few of the individuals are even shown on video trying to save the officers. Only eight of those individuals filmed as participating in the lynchings have been detained (*La Jornada*, 3 December 2004). At the same time, there have also been allegations of illegal detentions and searches committed by the police forces in the context of the investigation and detention of suspects in the area (*La Jornada*, 30 November 2004).

The days following the lynchings, academics, intellectuals and other social actors condemned the extreme violence and the failure of the authorities to adequately respond to the incident. The Centre Prodh called for a report from both

the PFP and the local SSP regarding the events that occurred in San Juan Ixtayopan, the investigations carried out to date, and how the Mexican government will provide reparation for the victims.

Mexican politicians, President Fox amongst them, have opted for cataloguing the lynchings as a “salvage act” or wrongly claiming that they were the consequence of customs (generally referred to as “usos y costumbres”) particular of indigenous cultures. The lower and upper chambers of the Congress were prompt to emphatically condemn the lynchings (*La Jornada*, 3 December 2004). Also, the National Ombudsman, Jose Luis Soberanes, criticised the political arguments between the federal and local authorities, appealed for political responsibility, and stated that the omissions committed by authorities in this case may constitute a crime (*La Jornada*, 3 December 2004).

Mexico City’s Ombudsman, Emilio Alvarez Icaza, affirmed during the submission of his report to the local Legislative Assembly’s investigation committee, that the lynchings in San Juan Ixtayopan are a dramatic call to place attention on the failures of the justice system (*La Jornada*, 2 December 2004). In fact, Alvarez Icaza issued a recommendation in 2002 regarding a lynching in another municipality in the southern part of Mexico City, where he called on the local Ministry of Public Security and Mexico City’s Attorney General’s Office to implement measures to avoid the repetition of these acts. He regretted the fact that this recommendation was not fulfilled by the local authorities since to date no one has been accused of the lynching in 2002, which, he said, encourages impunity (*La Jornada*, 2 December 2004).

Not an isolated case

The phenomena of lynchings in Mexico cannot be solved by accusing people without adequate evidence and only as a result of political pressure, or by firing public servants (who have yet to be put on trial for their failure to act); the solution to this problem is far more complex. Lynching is related not only to a deficient access to justice, impunity, low education levels or mistrust, it is also a historical problem. The weakening of the State and its absence in wide sectors of the society comes from processes that have shaped the country over decades (*La Jornada*, 16 January 2005). In reality, the case of the lynchings in San Juan Ixtayopan is just one of dozens that

occur frequently in Mexico. The Mexican State, in spite of its comparably high level of economic development and a more stable political situation, has not managed to control this problem. In fact, the phenomena of lynching in Mexico has increased in the last 20 years and particularly since 1994 (*La Jornada*, 16 January 2005). Mexico City and its surrounding areas have the highest concentration of lynchings, facilitated by its dense population; followed by Chiapas, Oaxaca, the State of Mexico, Puebla and Morelos (*La Jornada*, 16 January 2005). Lynchings occur only sporadically in the rest of the states of the Republic. It is important to highlight that in the period from 1991 to 1999 there were 96 cases of lynching and from 2000 to 2004 there have been 100 cases registered (Centre Prodh, *Justicia por Propia Mano*, 2001; *La Jornada*, 28 November 2004). According to figures released by Mexico City’s government, after the incident in San Juan Ixtayopan, there have been 23 violent acts registered where people have tried to take justice into their own hands (*Reforma*, 14 February 2005).

The municipalities of Mexico City and the state municipalities where lynchings have been carried out more frequently are also areas with high levels of marginalisation. Although poverty does not condition violence, it does create a favourable atmosphere for desperation, as one’s life expectations are diminished and the State’s institutions fail to attend to the needs of large sectors of the population (*La Jornada*, 16 January 2005).

Indeed, it has been observed when documenting cases that the main reasons that the population has given for carrying out this type of acts are mistrust towards law enforcement officials, the perception of intense insecurity or vulnerability, the failure of the government to solve public security problems, corruption, and general inconformity with the institutions in charge of justice procurement (Centre Prodh, op.cit).

Violations of International Human Rights Instruments

The Mexican State is violating different commitments it has assumed under the international human rights instruments by ignoring the growing tendency of lynching in the country. According to Article 8 of the Universal Declaration on Human Rights, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights...”.

The same right is protected under article 14 of the UN International Covenant on Civil and Political Rights and by articles 8 and 25 of the Inter-American Convention on Human Rights.

The government has clearly violated this right by ignoring the recommendation given by Inter-American Commission on Human Rights (IACHR) since 1998, where, in the conclusions of its “Report on the Situation of Human Rights in Mexico,” the Commission stated that “...scepticism makes people reluctant to lodge complaints about criminal acts because they consider the judicial police to be ill-equipped as an organization to conduct the necessary investigations, serious cases of taking justice into private hands will increase and, with them, impunity. In order to combat this problem, the Commission recommends that better training be given to agents of the judicial police, with strict criteria established for their selection and courses being organized for them in police techniques and human rights...” (IACHR, September 1998, OEA/Ser.L/V/II.100, par. 392).

Conclusion

The current government has tried to divert its responsibility for the lynching in San Juan Ixtayopan and for other cases of lynching, by calling it a salvage act and relating it to “usos y costumbres” practices. At the same time, it has attempted to provide only a superficial solution to the problem by detaining people and by carrying out investigations in ways that constitute violations of the human rights protected by the international instruments ratified by Mexico as well as by national legislation. In addition, this particular lynching has been used as a political tool in a context of a pre-electoral confrontation between the federal government and the government of Mexico City.

As was explained above, lynchings in societies are a product of several factors that range from mistrust of law enforcement authorities to aspects of marginalisation, both of which are constantly present in Mexican society. If the government does not implement an integral solution to this problem, the lynchings in San Juan Ixtayopan will be added to the growing statistics of lynchings in the country and the population’s sense of insecurity will only increase.

The Military in High Security Prisons: One Step Towards Further Militarisation in Mexico

During the transitional period of this government, President Vicente Fox had promised to gradually demilitarise the police forces. Nevertheless, the latest incidents in high-security prisons in Mexico confirm the contrary. On 14 January 2005, more than 750 troops took control of the “*La Palma*” high-security prison in the State of Mexico as a result of two fatal shootings at the prison. Initially the shootings were thought to be related to a rivalry between jailed drug lords, but now it is believed that those involved were part of an alliance to escape (BBC news, 15 January 2005). Despite the tight security controls to enter the high-security prisons, there have been four murders of drug-dealers within the prisons in the last eight months. Therefore, these incidents appear to be more related to corrupt practices by officials at all levels of the prisons rather than a failure in the security controls.

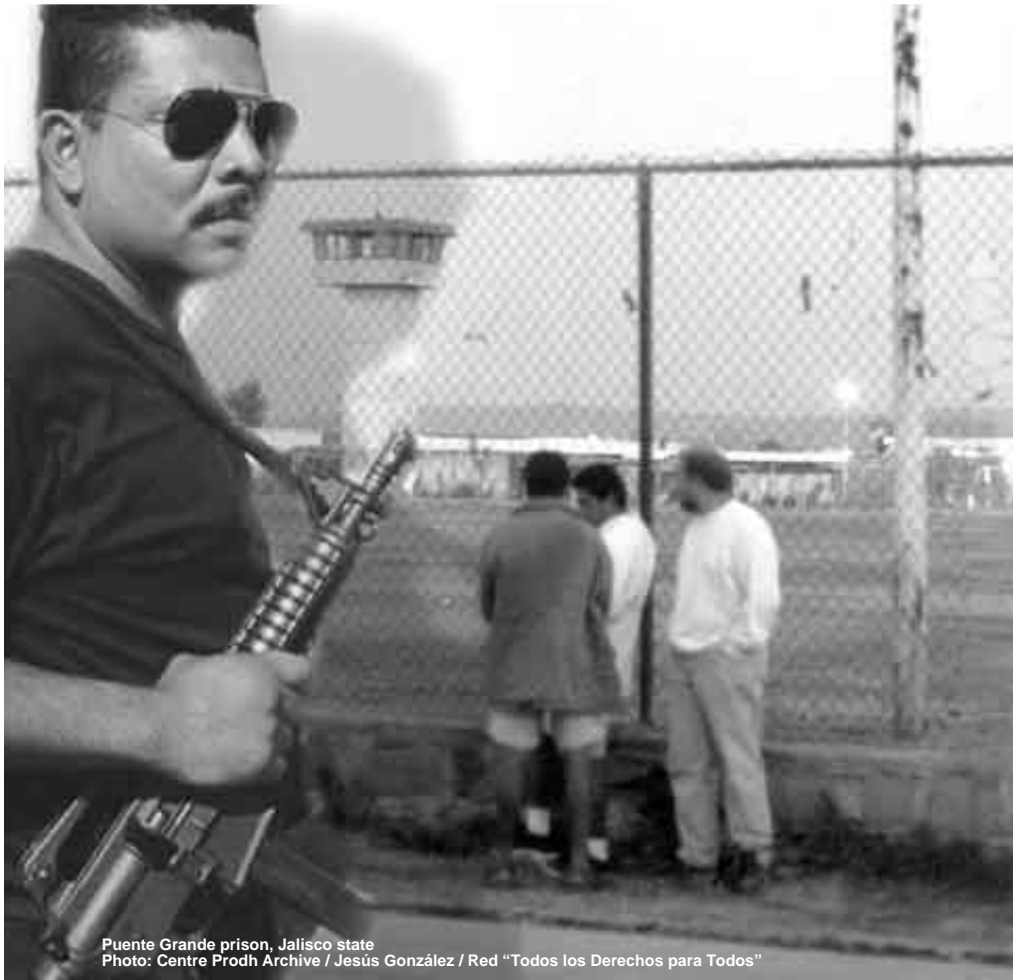
Worrying solutions to a structural problem

The high-profile action implemented in the prisons comes after the former head of Mexico’s federal prisons, Carlos Tornero Díaz, resigned on 13 January of this year. Shortly after, the Ministry of Public Security (*Secretaría de Seguridad Pública, SSP*) implemented permanent police operations inside the high-security prisons to strengthen internal and external security, which have been run by the Federal Preventive Police (*Policía Federal Preventiva, PFP*), where at least half of the agents are members of the Army. This is worrying because the increasing involvement of the armed forces in tasks that correspond to the civil authorities is creating a confusing amalgam of police forces within Mexican society.

Since 1975, the Army has been involved in combating drug-trafficking. Six years

ago, in 1999 during President Zedillo’s administration, the armed forces were incorporated into the national public security system with the creation of the PFP. This was allegedly done to respond to a crisis in the administration of justice. There are currently 5,326 members of the military working in the PFP and 1,164 of them have been sent to three high security prisons, including *La Palma* (*La Jornada*, 8 January 2005). According to the Federal government this was done with the intention to recover their control over high security prisons.

From a human rights perspective, another worrying aspect of the actions taken by the government is that a few days after the incident in “*La Palma*”, the head of the SSP, Ramón Martín Huerta, named Miguel Ángel Yunes Linares as the second in charge of the Prevention and Citizen’s Participation Office within the SSP. Miguel Yunes has led the police operations of the PFP in the high security prisons. In the past, Yunes trajectory has been marked by his hard-line approach in Veracruz. There, when serving as the local Minister of the Interior, he violently repressed *campesinos* opposing the local government and, at the same time, supported paramilitaries groups (*guardias blancas*) (Press release, Human Rights Organisations’ Network “All rights for All”, 12 January 2005). During this time, the National Human Rights Commission (*Comisión Nacional de Derechos Humanos, CNDH*) issued 15 recommendations to the local government regarding human rights violations. Although these recommendations were directed at the local government, they were issues related to Yunes’ office. He has such a bad reputation that even members from conservative organisations, such as Mexico City’s Citizen’s Council, have catalogued him as a repressor and someone closed to dialogue (*La Jornada*, 12 January 2005). Recently, he has blamed human rights organisations for the relaxation of the discipline in high-security prisons (*El Universal*, 4 February 2005), referring to a recommendation made by the CNDH in 2001 about removing the security cameras from the toilet areas, which is where one of the murders was carried out (*Proceso*, 16 January 2005). In light of this, Yunes’ naming can be interpreted as an implied decision to overpass the respect and protection of human rights within the context of public security and to have a hard-line approach to issues related to security in prisons (Human Rights Network, op cit.).



Puente Grande prison, Jalisco state
Photo: Centre Prodh Archive / Jesús González / Red “Todos los Derechos para Todos”

A problem waiting to happen

Since September 2003, the CNDH had already issued a warning about the chaos and corruption present in the “La Palma” high-security prison, which was described as being one of “total vulnerability”. A CNDH representative (*visitador*) detected during his visit to “La Palma” in 2003, that some inmates had cellular phones, sharp objects (knives) and drugs inside their cells, with no actions from the authorities to address this situation. In addition, the CNDH received complains from 30 guards in October 2004, who said that they felt insecure and that there were possibilities for revolts and hunger strikes as well as irregularities that could lead to escapes. During their recent visit to “La Palma”, after the intervention by the PFP on 14 February, the CNDH’s representatives once again described the situation as being vulnerable (*Proceso*, 16 January 2005).

The crisis in the high security prisons is related to structural problems in the design of the prison system in the country as well as to more complicated problems such as the engrained culture of corruption and clientelism practices that have been predominant in Mexico for decades.

Human rights concerns

The Centre Prodh recently restated its worries about the human rights violations committed by members of the military. The increasing involvement of the military in civilian tasks has increased since 1995 and especially in the last four years. This tendency has even been noticeable in the federal cabinet, both in the Ministry of Public Security as well as in the Attorney General’s Office, (*Procuraduría General de la República*, PGR). The growing involvement of members of the military increases the chances of more cases of human rights violations committed by the military against civilians being assumed by military jurisdiction, resulting in biased criminal investigations and unfair trials (see Press Release, Centre Prodh, 18 February 2005).

The tendency to militarise public security tasks has been questioned by several international human rights mechanisms. Amongst them, the UN Working Group on Arbitrary Detention called for a clear separation between military and policing tasks in the area of law and order in 2003. Echoing this recommendation, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions recommended the Mexican government to:

“Ensure the demilitarisation of society and avoid deputizing the armed forces to maintain law and order or to eradicate crime” [E/CN.4/2000/3/Add.3m, November 1999, par. 107, b)]. Also, the IACHR has manifested the need to demilitarise society and avoid the deployment of the armed forces in law and order operations.

Conclusion

In spite of the numerous recommendations by international human rights instruments and national and international human rights organisations, the government has not shown a political will to fulfil its promise to demilitarise police forces and on the contrary, it has allowed the growth of military involvement in civil tasks. The intervention of mixed military-civilian police forces in high-security prisons represents one further step towards militarisation.

The crisis within the prison system cannot be solved by involving the arm forces, but rather a thorough solution is required that would look into corrupt practices and their due sanction, without the use of a hard-line approach. On the contrary, there may be even more human rights violations committed against civilians by members of the military.

Euzkadi Worker’s Triumph After a Three-Year Struggle for Their Labour Rights

On 17 January 2005 an agreement was signed between the National Revolutionary Union of Euzkadi Workers (*Sindicato Nacional Revolucionario de Trabajadores de Euzkadi*, SNRTE), the German-based company Continental Tire, and a third party, Llanti Systems, to reopen a tyre production plant that had been closed for over three years, resolving the labour conflict between the workers and Continental. At its signing, President Fox stated that the agreement was a clear example of the democracy currently present in Mexico and of the government’s role of “privileging a space for dialogue between sectors as a promoter and catalyst of novel solutions that contribute to the country’s development” (*La Jornada*, 18 January 2005). However, the following will illustrate that, contrary to Fox’s affirmations, the resolution of the conflict was not due to the efforts of the federal government but rather to the struggle and persistence of the Euzkadi workers and support for their cause from several sectors of civil society, both

nationally and internationally, to demand justice and respect for their human rights in Mexico.

Background of the case

On 16 December 2001, Continental Tire (identified in Mexico as *Hulera Euzkadi*) closed one of its two plants in the country without having the necessary authorisation to do so, as is stipulated in Mexican legislation. The closing of the plant, located in El Salto, Jalisco, left 1,164 workers unemployed and had secondary affects on the population of El Salto given that the plant was one of the main sources of employment in the area.

On 22 January 2002, the workers of the SNRTE decided to go on strike to protest their wrongful dismissal and the illegal closing of the plant. Two months later the Conciliation and Arbitration Federal Board (*Junta Federal de Conciliación y Arbitraje*,

JFCA) declared the strike “legally not viable” and “inadmissible” (*improcedente*) although this classification does not exist within Mexican laws. On 3 October 2002, the First Circuit Labour Court resolved in favour of the workers, ordering the JFCA to re-evaluate the case. In its resolution the Court stated that the company’s decision to close the plant was illegal and without basis and that calling the strike inappropriate was an invention of the company to justify closing the factory. Nevertheless, the JFCA ruled for the second time on 17 February 2003 that the strike was “inadmissible”. Months later, on 23 June 2003, the judge of the Third District Labour Court of the Federal District granted a new *amparo* (similar to habeas corpus) as a definitive decision in favour of the union, ordering the Board to set a date and time to hold the hearing to re-evaluate the strike. This was held on 17 February 2004, where the JFCA finally declared the strike “existent.”

In this case, the workers had to maintain their struggle for 25 months, without a salary or benefits, in order for the Mexican authorities to make valid their right to strike as is recognised in international and regional human rights instruments, as well as national legislation. While President Fox stated to German organisations in his visit to the country in January 2003 that as far as he knew, the plant in El Salto would not be re-opened, the workers of the SNRTE carried out visits to Continental's annual shareholders meetings in Hanover, Germany; they submitted a complaint before the National Contact Point of the Organisation for Economic Co-operation and Development in Mexico; issued several urgent actions and declarations during key moments of the struggle; and established extensive relations with other unions, organisations, movements and foundations both nationally and internationally. It was thanks to these efforts and the resulting national and international pressure that the JFCA finally recognised the strike as existent. As a result of this decision, Continental also changed its position and conceded to negotiate with the workers an adequate and just resolution to the conflict.

Resolution of the conflict

In the final agreement between the SNRTE, Continental Tire, and Llanti Systems, Continental handed over half of the plant to the workers and paid them their due indemnifications as well as agreeing to provide technical assistance to the workers

for six months, to sell them the raw materials at cost and to buy 500 thousand tires from them each year. Llanti Systems purchased the other half of the plant and together with the 604 workers who maintained the strike and who are now organised as a cooperative, will be part of the civil association *Corporación de Occidente*.

Although this resolution put a halt to the company's violation of the workers' labour rights, the Mexican government did little to protect their rights during the conflict and has not taken steps to assure the reparation of the damages derived from the violations committed against them. This is particularly the case regarding the right to health, where it should be stated that during the time that the strike was considered "inadmissible", the workers were denied access to medical care through the Mexican Institute for Social Security (*Instituto Mexicano de Seguro Social*) and by the end of the conflict, five workers had died, in part due to a lack of adequate medical attention. Likewise, the government permitted the distribution of "black lists" in the region of El Salto, resulting in the unjustified dismissal of family members of the strikers who worked in other factories in the region's industrial corridor.

Conclusion

The Agreement on Economic Partnership, Political Co-ordination and Co-operation

between the Mexican Government and the European Union (Global Agreement), of which the German State is part, contains a democratic clause and explicit agreements on human rights. Article 1^o directly stipulates: "Respect for democratic principles and fundamental human rights proclaimed by the Universal Declaration of Human Rights, underpins the domestic and external policies of both Parties and constitutes an essential element of this Agreement."

In light of this, it is clear that within the framework of the Global Agreement, the State Parties have the obligation to respect, guarantee and promote human rights, including in the context of the trade and investment commitments that the States have assumed. Interpretations of the Universal Declaration by the UN Sub-Commission on the Promotion and Protection of Human Rights further indicate that the promotion of human rights is not confined only to governments, but also corresponds to individuals and institutions, including transnational corporations (E/CN.4/Sub.2/1999/11). Therefore, transnational corporations also have the responsibility to ensure that their activities do not lead to human rights violations in the countries where they are operating.

In the case of Euzkadi, it is evident that the Mexican government did not assure the promotion and respect for the human rights of the workers in the operations of Continental Tire in the country and in many instances supported the company and permitted actions that led to further violations. Continental itself showed reticence in accepting any responsibility for human rights violations in the case, agreeing to negotiate with the workers only when their arguments were not supported in the final resolution of the JFCA.

It is hoped that in the future the Mexican government will take actions to assume its primordial responsibility to protect and promote the human rights of its citizens, particularly over the rights and demands of transnational corporation operating in the country. In this regard, the government should ensure its compliance with the stipulations of Article 1 of the Global Agreement in its relations with the European Union and its Member States, as well as express its support for the draft "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights", approved by the UN Sub-Commission in August 2003.



Demonstration by Euzkadi workers
Photo: Enrique Gómez

The Supreme Court of Justice neglects universal jurisdiction

On 23 February 2005, the First Chamber of the Supreme Court of Justice of the Nation (SCJN) stipulated that statutory limitations are applicable to war crimes and crimes against humanity committed before 2002 in Mexico. Given this, the arrest warrant emitted last year against Former President Luis Echeverría Alvarez and other State government officials under the request of 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) will not be enforced.

This decision is especially worrying in terms of the international credibility of the Mexican government, as most authorities now accept war crimes and crimes against humanity as being subject to universal jurisdiction (article 6 of the Charter of the International Military Tribunal of 1945). Moreover, on 26 November 1968, the UN General Assembly adopted the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against humanity*, reinforcing the general conviction that war crimes form a distinct category under international law, susceptible to universal jurisdiction.

Technically, crimes against humanity clearly cover genocide and related activities such as "willful killing, torture or rape committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds" (Statute of the International Tribunal for Rwanda).

However, on the basis that the Mexican State signed the Convention in 1969 but did not ratify it until 15 March 2002, the crimes committed before that date are considered by the Supreme Court to not apply to the terms of the Convention.

New petition against the Mexican Government submitted to the IACHR

On 18 February 2005, the *Fray Bartolomé de las Casas* Human Rights Centre, located in San Cristobal de las Casas (Chiapas) addressed a new petition² to the IACHR against the Mexican government, alleging human rights violations committed by paramilitaries in the state of Chiapas. The complaint argues that domestic remedies have been exhausted in the intent to obtain justice for a series of crimes committed by paramilitary groups -suspected to count on the support of the state Government- against indigenous people. An example of this was the massacre of 49 tsotsil indigenous (45 adults and 4 not yet born babies) *campesinos* by a group of men holding arms that are exclusively for use by the Mexican military at the village of Acteal, on 22 December 1997. Those crimes represent, according to this human rights center, a systematic State strategy to fight against insurgents and violate the right to life, the right to personal integrity, the right to protection to the family, the right to judicial guarantees, the right to judicial protection and the right of the child. Recently, the Minister of the Interior, Santiago Creel, suggested that these crimes be attended to by the FEMOSPP. However, the *Fray Bartolomé de las Casas Human Rights Centre* argues that the documented crimes are not of the past, as the persecution still continues. The centre has requested from the Mexican government to respond to the IACHR in relation to this complaint during the first week of March.

Electoral democracy needs strengthening

Last February, four states held elections for governors and local Congress representatives. In both Quintana Roo and Hidalgo, the nation's former ruling party, the PRI, maintained its control of the governorship. In Hidalgo, Miguel Osorio Chong did so with the help of the Green Party (*Partido Verde Ecologista*). In Quintana Roo, although the PRI won the governorship with Félix González Canto they lost their outright majority in the state legislature there for the first time. The PRD remained in power in Baja California Sur with Narciso Agúndez as a governor. More importantly, in a historical event, the PRD, with their candidate Zeferino Torreblanca Galindo, won elections in the state of Guerrero, a PRI southern stronghold where it had held power for 76 years.,

Overall, many irregularities were denounced in the different election processes.. For example, in Baja California Sur where exit polls are prohibited by article 177 of the Electoral Law, the Mitofsky group organized such polls and television channels used the results to inform the public just about three hours after the polls concluded. Many electoral results are also being brought to the Special Prosecutor's Office in Charge of Electoral Crimes by opposition parties that have rejected the results of the elections, as in the case of Guerrero. Finally, both in Quintana Roo and Guerrero, violence was registered as an active pattern during the voting period. In Guerrero, the night before the polls were open, three policemen were killed, two were shot and another one killed by a bomb. In Quintana Roo, 52 oil stations were suddenly closed. Rumours argue that the governor in office (PRD) ordered such measure to be taken in order to prevent PRI from employing hundreds of taxi drivers as a way to transport potential voters.

(1)In the Newsbriefs section of the Fall 2004 edition of Focus, the brief "A Federal Judge of the United States Grants Political Asylum to a Mexican with HIV/AIDS" contained a mistake. In reality, the judge was a migration judge

(2)In October 2004, another petition was addressed to the IACHR dealing with special measures asked to Project displaced person as well as a special witness.

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. Government 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.

The Centre 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, monitoring, and public policy; and four work areas: communication, information centre, international relations, and organisational development. The Centre Prodh has consultative status with the United Nations Economic and Social Council and as a registered organisation with the Organization of American States.

The 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.

For further information or to join the Centre 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: Mélanie Berthaud, Ana Paola Gutiérrez, Eduardo Reyes, Tzitzí Santillán, Irasema Zavaleta, Maureen Meyer.
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.

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