

Mexico's Human Rights Balance Sheet, 2006-2012

Rubén R. García Clark*



Luis Carbayo/Cuartoscuro.com

Demonstrators in front of one of the National Human Rights Commission offices, a frequent occurrence during the Calderón administration.

During the Felipe Calderón administration, human rights protections in Mexico made important advances, but also displayed considerable deficiencies and setbacks. If we do a six-year-term balance sheet of assets and liabilities in this area, the negative outweighs the positive. So, incoming President Enrique Peña Nieto will face the challenge of reversing this worrying deficit. The most outstanding achievement was the 2011 reform that incorporated the safeguarding of these rights into the Constitution and established guarantees mandating all Mexican authorities to maximize them in their respective spheres. However, the number of complaints from the civilian population about human rights

Complaints by citizens about violations to their individual rights increased in the framework of the application of a failed strategy to fight organized crime.

violations by the very bodies that by law or presidential mandate are charged with safeguarding public security have increased alarmingly. For example, between 2007 and 2011, complaints before the National Human Rights Commission (CNDH) against the Ministry of Defense (Sedena) rose from 362 to 1 626.

Another important achievement was to have included in Article 3 of the Constitution mandatory high school educa-

*Professor-researcher at the Mexico City Autonomous University (UACM) Human Rights Graduate Program.

Calderón's position consisted
of defending the impunity of the armed
and security forces and favoring his personal
religious convictions to the detriment
of the constitutional mandate.

tion, although the deadline for total coverage of this right is not until 2022. By contrast, today's educational authorities, on a federal level and in the state of Michoacán in particular, have been incapable of guaranteeing secular primary education to parents who have requested it in the town of Nueva Jerusalén, where a group of religious fanatics destroyed the local public school with total impunity.

Complaints by citizens about violations to their individual rights increased in the framework of the application of a failed strategy to fight organized crime. Not the Mérida Plan, agreed on with the U.S. government, nor the national public security system included in the Constitution in this presidential term, nor the 2008-2012 National Human Rights Program implemented by the federal executive, nor any CNDH recommendations managed to guarantee behavior by the military and the police with minimum respect for the civilian population's human rights, much less prevent or at least bring to justice those responsible for approximately 90 000 violent deaths, the death toll during Felipe Calderón's six-year term.

Several complaints by Mexican victims had to make their way to the Inter-American Human Rights Commission and from there to the Inter-American Human Rights Court before the Mexican government was forced to pay reparations for the violation of the complainants' basic rights. The Inter-American Court's sentences have not been fully or promptly obeyed by the Mexican authorities involved. However, one of the cases, that of the forced disappearance of Rosendo Radilla, in which the Mexican Army was proven to have been responsible, has been influential in Mexico's Supreme Court deciding in several recent instances that human rights violations of civilians perpetrated by military personnel that did not involve the breaking of military discipline would not be tried in military, but civilian, courts.

The Supreme Court also decided that victims' family members have the right to demand civilian trials of military personnel for human rights violations against civilians. Definitely, the Supreme Court's check on the unconstitutional

performance of military judges surpassed the timid presidential initiative of limiting military jurisdiction in cases of forced disappearance and rape and other sexual crimes, but not in the case of homicide.

If we focus the six-year balance sheet about human rights on the figure of the president, we will note Felipe Calderón's biased stance, which sparked not a few controversies among the different branches of government. These positions covered a broad range of issues: a staunch defense of the inviolability of military jurisdiction, which at the beginning of his term had its greatest expression in the exoneration of soldiers accused of raping and murdering Ernestina Asencio, and which Calderón later had to temper given the opposite decision by the Inter-American Court; the aforementioned Radilla case; the order the president gave the attorney general to contest the right to legally terminate a pregnancy, approved by Mexico City's Legislative Assembly; and his pressure on the members of the Supreme Court to not free the French citizen Florence Cassez, sentenced in Mexico for kidnapping, despite the fact that she had been a victim of a media montage ordered by Genaro García Luna, then head of the Federal Agency of Investigation and later the Minister of Public Security in Calderón's cabinet.

Calderón also pressured the highest court in the land to quash the case arguing the unconstitutionality of reforms approved by two state legislatures (those of Baja California and San Luis Potosí) that made the criminalization of abortion harsher in the name of a questionable "right to life from the moment of conception." This move openly coincided with the Catholic Church's traditional position and contradicts the international instruments signed by Mexico to protect women's reproductive rights, like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Belem do Pará.

Thus, President Calderón's position on human rights consisted of defending the impunity of the armed and security forces, and favoring his personal religious convictions to the detriment of the constitutional mandate that stipulates that military personnel must be tried in civilian courts when their victims are civilians, and to the detriment of due process and women's reproductive rights. In addition, to round out his administration, President Calderón confirmed his lack of interest in the rights of the victims of human rights violations, many produced by personnel under his command, when he froze the General Law of Victims promoted by the Movement for Peace with Justice and Dignity and passed

by Congress by presenting a constitutional controversy to slow down the law's publication; to replace that law, he proposed a bill to protect victims with much less scope than the bill already passed.

Also, at the end of his term, Calderón ratified his vocation for maintaining impunity for high officials of the executive branch, both during his and previous administrations, accused of human rights violations. He did not hesitate at all to request that the U.S. government grant diplomatic immunity for former President Ernesto Zedillo, currently facing charges in Connecticut for his responsibility in the massacre of 45 Tzotzil indigenous in Acteal, Chiapas, in 1997. Obviously, this decision is preventive, foreshadowing any possible accusation against Calderón himself after his term is up and he probably acquires residence somewhere in the United States. We should not lose sight of the fact that in 2011, Felipe Calderón was accused before the International Criminal Court for war crimes and crimes against humanity.

No less biased were Calderón's actions during his entire term in the terrain of electoral politics for which he was cited by the Federal Electoral Tribunal without sanction for favoring his own National Action Party. He also showed bias in labor issues: he always sought impunity for management, such as in the case of the miners trapped in the Pasta de Conchos mine, and defended management interests through a labor bill he presented to Congress that eliminates historic rights won by Mexican workers.

This was the final onslaught against workers, which began with the persecution of union leaders, like miners' union leader Napoleón Gómez Urrutia and electrical workers leader Martín Esparza. It was a continuation of the elimination of the parastate electricity company Luz y Fuerza del Centro (LyFC), in which the government openly decided not to protect the workers whose jobs it eliminated. He had also already left the employees of Mexicana de Aviación, the company fraudulently declared in bankruptcy with government approval, swinging in the wind.

The institutional counterweights (the media and civil society human rights defenders) were insufficient in the face of Felipe Calderón's bias. This also has to do with the Supreme Court having conservative judges who have supported him and his attack on the judicial branch as a whole for its supposed propensity to "let criminals go," to the point that recently the Attorney General's Office made baseless accusations against certain federal judges. Journalists and human rights defenders are not being protected by the government, leading

Calderón's administration confirmed its lack of interest in the rights of the victims of human rights violations, many produced by personnel under his command, when he froze the General Law of Victims.

to an increase in the number of murders of both attributed to organized crime and local strongmen, but that the authorities are not investigating or effectively bringing perpetrators to justice for.

Finally, as if all this were not enough, the rights to access to information and freedom of expression have been severely hard hit by Felipe Calderón's administration. It has systematically refused to make government actions transparent and has put pressure on supposedly autonomous competition and communications monitoring bodies in favor of the Televisa-TV Azteca television duopoly. This pressure has been accompanied with reprisals against media outlets like MVS for not having fired news anchor Carmen Aristegui, who refused to retract her question about whether the president had problems with alcoholism. Another reprisal from the federal government against a bothersome media outlet was the refusal to place government ads in *Proceso* magazine; this was the subject of a CNDH recommendation in favor of the weekly and the rights of its readers to information.

Given the non-transparency of the Calderón administration, as president-elect, Enrique Peña Nieto formulated a bill to strengthen the Federal Institute for Access to Information (IFAI), giving it more powers and autonomy. Although the proposal is plausible, Congress should use its constitutionally established obligation to guarantee rights to adopt a broader, more comprehensive perspective on human rights. That perspective would limit the federal executive's margin for acting with bias, strengthen the autonomy of the federal judiciary, and fully guarantee the right to public security without these actions serving as a pretext for violating other human rights. The government and Mexican society should also make a joint effort to amend laws, institutions, and attitudes to strengthen democracy and social equity, foster economic growth and competitiveness without violating labor rights, and protect human rights defenders and guarantee freedom of the press without rewarding or punishing the media in accordance with the likes and dislikes of the sitting president. ■■■