

Human Rights in A Context of Democratic Deficit

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President Felipe Calderón greets National Human Rights Commission President José Luis Soberanes.

An examination of human rights in Mexico sparks concern rather than encouragement. Reports by the National Human Rights Commission (CNDH), Amnesty International and the International Civil Commission for the Observation of Human Rights all cite grave human rights violations during the Fox administration that have never been satisfactorily addressed. The administration of Felipe Calderón, for its part, has begun a fight against insecurity and organized crime that in some ways seems at odds with safeguarding human rights. All this is happening in an international context of open retreat in

the field and weakening actions to promote democracy worldwide based on the argument that the war against terrorism requires the restriction of fundamental individual freedoms and therefore, the democratic achievements of the world's peoples. These restrictions have an impact not only on countries that are consolidating their democracies, but also those that have mature democratic regimens. Other factors that undermine human rights and democracy are the neoliberal policies that globally reduce the sovereignty of national states and strengthen private interests to the detriment of public interests.

The neoliberal model has contributed to increased economic inequality and social exclusion wherever it is adopted, undermining the essential link that should

exist between development, human rights and democracy, as stated in the Declaration on the Right to Development, passed by the UN General Assembly on December 4, 1986; the Declaration of Warsaw, "Towards a Community of Democracies," signed by more than 100 countries on June 27, 2000; and, of course, the Inter-American Democratic Charter, approved by the Organization of American States on September 11, 2001.

In our hemisphere, the commitments to development, human rights and democracy have not been met. This can be seen in the increase in the number of *failed states*, which, according to Noam Chomsky, are characterized by their inability or lack of determination to protect their citizens from violence, and by their tendency to situate themselves

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outside the law, whether it be national or international, and, although they have democratic institutions, suffer from a serious “democratic deficit,” which empties them of real substance. Chomsky thinks that the United States is beginning to take on some aspects of the failed states given its increasing distance from values like legality, equality, liberty and significant democracy.¹

In Latin America, researchers supported by the Inter-American Development Bank (IDB) and the International Institute for Democracy and Electoral Assistance (IDEA) report on a persistent “democratic deficit” in the region, demonstrated by the fact that many Latin American countries do not have the basic requirements for effective rule of law. According to the authors of the report *La política sí importa: Democracia y desarrollo en América Latina* (Politics Does Matter: Democracy and Development in Latin America), the result is an unreliable, unequal justice system incapable of ensuring legal security and therefore of guaranteeing the exercise of rights and obligations, or that does not effectively exercise its punitive function to stop the increase in different forms of criminal activities and threats to public security. At the same time, the state’s limited redistributive capabilities are expressed in a restriction of both basic social services and of its ability to train citizens to be efficient and productive members of society, which is indispensable for the expansion of citizenship.²

In Mexico, the deficiencies of the rule of law are worsened by a crisis of public mistrust in institutions and political actors. According to the CNDH, the alternation in office begun in 2000, that is, the year the National Action Party (PAN) took office, brought expect-

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tations that democracy and the respect for human rights would increase. However, these expectations were betrayed by, for example, President Fox’s attempt to abort Andrés Manuel López Obrador’s presidential candidacy using an unfounded charge to impeach him as mayor of Mexico City and the first executive’s open campaigning in favor of his own candidate, PAN contender Felipe Calderón. We should remember here that the Electoral Tribunal of the Federal Judiciary concluded that Fox’s intervention in the electoral process might have put the entire presidential election at risk. To Fox’s campaigning, we should add the Federal Electoral Institute’s unfortunate handling of the preliminary election results and its refusal to open up the presidential election ballot boxes for a recount, which has very probably resulted in decreased public confidence in this electoral body and democracy itself.³

For the period 2000-2006, in general, human rights expectations were not met. In its report on that period, the CNDH states that the authorities did verbally abide by their human rights commitments, but that few concrete measures were actually taken to make them a reality. Also, the national ombudsman’s report points to signs of active defense of human rights in the international sphere that contrasts with the dismissive and negligent attitudes domestically. It also underlines the systematic refusal

by some government bodies to comply with CNDH resolutions, and that numerous complaints were made about arbitrary arrests, inhumane treatment, the continued use of torture in investigations and frequent failures of the administration of justice.⁴

According to this report, “Given the nationally important investigations, like the one into the cases of persons who disappeared during the so-called ‘dirty war,’ or the heightened public insecurity nationwide, the feminicides of Ciudad Juárez or the May 2004 violence in Guadalajara, the CNDH decided to write a general report or recommendation. We should point out that these general resolutions, which fall within the bounds of the CNDH law, were verbally accepted, but the violations were not punished. In other cases, the responsible authorities ignored the recommendation.”⁵

Some of the CNDH’s points are confirmed in Amnesty International’s 2006 Annual Report. A few ideas that appear in the latter should be underscored, such as the initiation of a National Human Rights Program which seems to have had little effect. The proposed amendments to the Constitution and reforms to the criminal justice system never came about. The commission continued to receive reports of arbitrary arrests, bad treatment and torture. The number of young women murdered in Ciudad Juárez rose once more and the response to violence against women continued to be inadequate. The justice system was again an important source of human rights violations since it protected neither victims’ rights nor those of the accused. Its limitations had a disproportionate effect on the most underprivileged, poorest members of society. Several journalists died violently or were threat-

STATE OF CNDH RECOMMENDATIONS (2005 AND 2006)		
STATE OF THE RECOMMENDATION	2005	2006
Accepted, with proof of partial compliance	26	33
Accepted, with proof of full compliance	2	5
Accepted, with no proof of compliance	8	2
Not accepted	6	11
Unanswered	13	6
Accepted, still within the time limit to present proof of compliance		3
TOTAL	55	60
Source: National Human Rights Commission, 2005 and 2006 (www.cndh.org.mx).		

ened. Attempts to hold past violators of human rights responsible for their actions also failed.⁶

The CNDH balance sheet concludes that compliance and observation of human rights during the 2000-2006 presidential term were insufficient, with advances in some areas like freedom of expression. An important achievement in this field was the approval of the Federal Law on Transparency and Access to Public Information, as well as the creation of the Federal Institute for Access to Public Information (IFAI). The Ministry of the Interior has stated that with the creation of these instruments, “Mexico has eliminated the conditions favoring government secrecy. A culture of transparency and accountability has begun to be created through institutions and processes that guarantee public access to information about the functioning of government bodies.”⁷ Other undeniable advances in the field of recognizing and protecting the rights of both individuals and those of ethnic communities are the constitutional reform on indigenous

rights and the passage of the Federal Law to Prevent and Eliminate Discrimination and the creation of the National Council to Prevent Discrimination (Conapred).

One indicator of the respect for human rights is authorities’ willingness to comply with CNDH recommendations to correct or prevent their violation. Unfortunately, between 2005 and 2006, the number of recommendations ignored by the authorities increased from 10 to 20 percent, as shown in the table above.

The year 2006 was particularly critical with regard to human rights. Suffice it to mention the unfortunate episodes in San Salvador Atenco, Lázaro Cárdenas (in Michoacán) and Oaxaca. In all three cases, the CNDH found that confrontations between local and federal security forces and local inhabitants and demonstrators had resulted in grave human rights violations. The common denominator was the violation of the right to life (with 24 people killed), but there were also violations to physical well-being and the freedom

to demonstrate, affecting hundreds of people who were injured or arbitrarily detained. In the cases of Atenco and Oaxaca, instances of torture and violations of sexual freedom of both men and women were reported, in addition to diverse attacks on the freedom to legality and legal security. In Atenco, foreigners were expelled from the country in frank violation of the General Population Law.

Given these human rights violations, the CNDH wrote reports and, in the case of the violence in Atenco and Lázaro Cárdenas, made recommendations to protect the rights of detainees, restore the rights of foreign nationals and begin investigations about government officials’ actions to determine who was responsible for what. The governments of the State of Mexico and Michoacán, as well as the National Migration Institute, partially complied with the recommendations, while the federal Ministry of Public Security roundly refused to accept them, arguing that the members of the Federal Preventive Police had acted legally and within the legal framework of coordination and legitimate self-defense and with full respect for the human rights of demonstrators and persons arrested during the commission of a crime.

CNDH recommendations are still pending in the case of Oaxaca. However, it should be mentioned that the International Civil Commission for the Observation of Human Rights (CCIODH) presented its report *Conclusiones y recomendaciones preliminares sobre el conflicto social de Oaxaca* (Preliminary Conclusions and Recommendations about the Oaxaca Social Conflict) in Mexico City January 20, 2007.⁸ The CCIODH agrees with the CNDH about the human rights violations in

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Oaxaca, and contributes an interpretation that situates them within a state legal, police and military strategy to repress independent social movements.⁹ From that standpoint, the CCIODH recommends dealing with the original causes of the conflict, rooted in the structural problems of poverty and strongmen-controlled local leadership, as well as reestablishing the rule of law, freeing detainees, recovering society's trust, restoring order through dialogue, not force, and determining the responsibilities of each of the authorities involved.

Starting with his inaugural address, President Felipe Calderón's stance with regard to human rights clearly stated that his priority was going to be strengthening the state's capability to fight crime and ensure public security. However, the emphasis is on the government's effective ability to repress rather than on crime prevention in society or on safeguarding human rights.

In accordance with his punitive vision of the rule of law, Calderón sent Congress bills that increased sentences (life imprisonment for kidnappers), strengthened district attorneys' police forces, giving them technical and functional autonomy, the ability to investigate and tap phones at their discretion, do searches and make arrests without warrants in the case of organized crime or when criminals are apprehended *in flagranti delicto*. To support this empowered police force, Calderón proposes

harmonizing the country's criminal codes and creating a National System of Public Security, a Single System of Criminal Information and a National System of Police Development, which would have the task of recruiting and training police officers who, in addition to the district attorneys' police agents, could be freely removed from their posts without the right to be reinstated.

The salvageable aspects of Calderón's proposal include the introduction of guarantees for complainants, the modernization of the administration of justice by establishing oral trials and the technical and functional autonomy of the federal Attorney General's Office, which should answer only to the satisfaction of society's interest and the common good, thus averting partisan administration of justice by the president as happened when Fox attempted to impeach López Obrador.

The matter for the most concern in Calderón's position is that, shielding himself behind a supposed attack on organized crime, he justifies the implementation of special measures like fast track extraditions and discretionary powers for the police. In addition, it makes it seem like the executions of drug traffickers do not merit investigation by federal authorities, much less bringing their murderers to trial. This would mean that the state would not be fulfilling its obligation to investigate and prosecute *ex officio* all kinds of crimes.

Without renouncing the state's effectiveness in its fight against crime and the administration of justice, democracy must be strengthened nationally and globally by deepening the reform of the state in Mexico and ensuring unrestricted respect for international law by *all* UN member states. This is

indispensable for promoting a socially inclusive model of economic development that makes it possible to effectively protect fundamental rights, that is, the human, civil and political rights protected by the constitutions of democratic states, and to promote the second- or third-generation rights that are always left until last. ■■■

NOTES

¹ Noam Chomsky, *Failed States: The Abuse of Power and the Assault on Democracy* (New York: Metropolitan Books, 2006).

² J. Mark Payne, Daniel Zovatto and Mercedes Mateo, comps., *La política sí importa: Democracia y desarrollo en América Latina* (Washington, D.C.: BID/Instituto Internacional para la Democracia y la Asistencia Electoral/Planeta, 2006), p. 10.

³ Former IFE President José Woldenberg stated that Mexico's July 2006 elections brought with them a rebirth of disbelief and doubts about the vote count (*La Jornada*, September 26, 2006). The most recent Latinobarómetro poll reveals that Mexicans trust democracy less and "under certain circumstances" would support an authoritarian government (*El Universal*, December 8, 2006).

⁴ Comisión Nacional de Derechos Humanos, *Balance del 2000 al 2006 en materia de derechos humanos en México*, www.cndh.org.mx/lacndh/informes/espec/balance00-06.pdf.

⁵ *Ibid.*, p. 3.

⁶ See Amnesty International's "Report 2006, Americas: Mexico," <http://web.amnesty.org/report2006/mex-summary-eng#top>, and "Mexico. Laws without justice: Human rights violations and impunity in the public security and criminal justice," <http://web.amnesty.org/library/Index/ENGAMR410022007?open&of=ENG-391> (accessed April 20, 2007). [Editor's Note.]

⁷ Ministry of the Interior, *Los nuevos retos de la gobernabilidad democrática*, Government of Change Collection (Mexico City: Segob/FCE, 2005), p. 50.

⁸ See http://cciodh.pangea.org/quinta/070120_inf_conclusiones_recomendaciones_eng.html. [Editor's Note.]

⁹ Comisión Civil Internacional de Observación por los Derechos Humanos, "Las violaciones de derechos en Oaxaca," *Memoria*, no. 217 (March 2007), pp. 12-16.