

# Panorama of Human Rights in Mexico in the Twenty-first Century

Francisco Javier Acuña Llamas\*

## INTRODUCTION

Although addressing the current state of human rights in Mexico can be rather reckless and lead to a disjointed discussion, it is of vital importance. The best way is to try to order the different aspects implicit in the matter in a country whose democratic transition is barely expressed in some positive developments mixed with artful and outright resistances to the installation of a republic that—involed in the 1917 Constitution—has gone through a long stage of non-observance and voluntarist application as befitting authoritarian regimes.<sup>1</sup>

From 1968 to 2000 the positive signs have increased gradually, reflecting a democratizing process with risks, without preestablished rules and to differing degrees. People's mentality has begun to change, leading them to try out new political and public habits and experiment with new limits on norms to the benefit of society's fundamental rights.

However, having said this, we must recognize that popular mentality is still not completely democratic since it was nurtured and confused with a style of government based on simulation and that for decades practiced a patronage system, cooptation and, to a lesser extent—although very serious—selective repression.<sup>2</sup>

Many of the social habits of the pre-modern period remain in place, patterns of a still precariously established citizens' attitude vis-à-vis the state and its institutions that reveal generalized ignorance of democracy and its concrete processes (both on the part of the citizenry and that of the political actors). Individual and collective forms of behav-

ior persist, previously a product of fear of the authoritarian regime, today due to the uncertainty, resentment, frustration and impotence vis-à-vis impunity and the unsatisfactory performance of public institutions.

Therefore, skepticism and discouragement are the prevailing attitudes with regard to the state and its agents, supposedly renovated because of the alternation in office of the executive.

## RESULTS OF NGO EFFORTS FROM 1997 TO 2002

Long-term efforts by nongovernmental organizations (NGOs) have led to the following positive developments:

1. *The scandal of Paris*. In 1997 we witnessed the nongovernmental organizations' severe admonition of then-President Zedillo abroad because he had clumsily ignored an appointment that he had first granted and then canceled with Amnesty International General Secretary Jean Pierre Sané. The immediate repercussion of this censure was a shadow cast over the president's trip through Europe to try to achieve the signing of a free trade agreement with the European Union.<sup>3</sup>

The government reaction was:

- a) To create that very year the Federal Government's Human Rights Inter-ministerial Commission, made up of the Ministries of the Interior, Foreign Relations, National Defense and Public Safety and the Attorney General's Office, plus an observer from the National Human Rights Commission (CNDH).
- b) The preparation of an agenda for talks with Mexico's NGOs and Amnesty International chapter; this dia-

\* Human rights specialist. Professor, researcher and coordinator of the Master's program in law and director of the human rights program at the Anáhuac University (South campus).

- logue continues in its essential aspects, particularly with the Ministries of Foreign Relations and of the Interior.
- c) The establishment of an agenda for the evaluation of the most delicate situations both from an institutional and a legal point of view and of pending important cases, previously disregarded by the federal government.
- d) Given the “democratic clause” demanded by the European Union for the signing of trade and political treaties with other countries, in 1999 the president’s office, taking advantage of its having a majority in Congress, began to

Revolution (PRD). However, in selecting the three candidates to be considered to fill the post, the proposals of the NGO “All Rights for Everyone” Human Rights Network were ignored. The Senate’s choice, then, Dr. José Luis Sobranes, the current ombudsman, was not backed by the PRD, but was elected with votes from the governing Revolutionary Institutional Party (PRI), the PAN and the Green Ecologist Party of Mexico (PVEM).

2. *The Mexican state’s acceptance of the full jurisdiction of the Interamerican Human Rights Court in 1998.*

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- instrument its decision to amend constitutional article 102B to turn the CNDH into an autonomous constitutional body.<sup>4</sup>
- e) Once the amendment of Article 102B of the Constitution had been passed—along with several transitory clauses that allowed the Senate to ratify or change the ombudsman (the head of the CNDH)—NGO pressure because of deficiencies in then-ombudsman Dr. Mireille Rocatti’s work coincided with the federal government’s intention of removing her and the position of both the National Action Party (PAN) and the Party of the Democratic

This may well be the single most relevant fact which would lead to other steps forward.

3. *The Supreme Court’s interpretation ranking international treaties signed by Mexico beneath the Constitution and above federal law.*<sup>5</sup> Although this 1999 decision is somehow confusing, its mere existence has been a triumph since it reinforces the process of adaptation of Mexico’s legislation and the state’s commitments to international conventions and treaties. The problem here lies in the different reservations that the Mexican state has placed as obstacles in fundamental treaties and conventions and in its resistance to signing and ratifying cer-

tain very important human rights agreements.

4. *Mexico’s signing of the Statute of Rome in 2000 for the creation of the International Criminal Court.*

5. *The development of the bill on access to public information.* This was based on a proposal produced by a group of well known jurists from different universities, accompanied by more than 70 different national and local mass communications media. This bill has the backing of the congressional opposition but not the governing party, the PAN, which has announced that it will present a less ambitious proposal to define the meaning of access to public information.

6. *The historic CNDH recommendation to the president to create a special prosecutor’s office to investigate the cases of disappeared detainees.* This office will examine the evidence gathered in the 285 CNDH files about the concrete cases of persons who disappeared during the 1970s and 1980s.

7. *The partial compliance in 2002—after intense legal battles—of some of the Interamerican Human Rights Commission’s (CIDH) recommendations:* two peasant environmentalists unjustly tried in the mountains of Guerrero<sup>6</sup> were liberated for humanitarian reasons and the sentence of General José Francisco Gallardo was reduced, facilitating his release.<sup>7</sup> Both these decisions were the result of enormous international pressure and the clear objection to the army, which in different ways and for different reasons had participated in the arrest and trial of the three prisoners.

General Gallardo was released on the legal technicality of having served the minimum sentence, which means



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From left to right, General Francisco Gallardo, defender of the human rights of members of the armed forces; Rosario Ibarra de Piedra, historic leader of the fight for the presentation of more than 500 disappeared detainees; Digna Ochoa, recently murdered defense lawyer and human rights fighter.

that for the Mexican government he continues to be considered guilty of the crimes for which he was tried. It is a compromise that fulfills the first of the CIDH's demands ("immediate release of the general") but leaves unanswered the other demands, above all those that require the investigation and trial of those responsible for his arrest and trial when the military prosecutor who tried his case originally was Mexico's current attorney general, General Macedo.

#### MAIN OBSTACLES TO RESPECT FOR HUMAN RIGHTS

All of the following circumstances have a different negative impact on the creation of ideal legal-political conditions for full respect for human rights. Both national and international NGOs have pointed to them as signs for concern about the rhythm of advances in these matters.

1. The Attorney General's Office investigations about those behind cer-

tain cases of genocide have bogged down. This is the case of the massacres at Aguas Blancas, Acteal and El Charco, and constitutes non-compliance with CNDH recommendations in these matters to immediately clarify the circumstances and take the appropriate legal measures against those responsible.

2. Negotiations to create a climate of dialogue with the Zapatista National Liberation Army have failed. The reform of Article 2 of the Constitution voted by Congress is perceived as insufficient in that it is not a full translation of the San Andrés Larráinzar Accords into law.<sup>8</sup> The congressional efforts were eclipsed by protests from national and international NGOs that consider the reform incomplete and only a first point that must be complied with before peace can be achieved in Chiapas.

3. No headway has been made in the investigation of the murder of hundreds of women in Ciudad Juárez, Chihuahua. The general impression about these cases is that at the very least municipal, state and feder-

al authorities have displayed negligence and disinterest in the resolution of the cases of more than 250 young women who have been brutally abused and murdered in this border city.

4. More than three months after the crime, no progress has been made in the murder case of lawyer Digna Ochoa, former member of the Miguel Agustín Pro Human Rights Center.<sup>9</sup> Currently under the jurisdiction of the Mexico City District Attorney's Office, District Attorney Bernardo Bátiz, has reported that militarily personnel has been questioned in the investigation.

Suspicious have also arisen that the government was negligent in withdrawing CIDH-recommended measures to protect Ochoa's life and safety. At the time of her death, Digna Ochoa was looking into the case of the massacre in Aguas Blancas and the defense of four students accused of bank bombings. She had received constant death threats, all of which were known to the authorities and the public at large.

5. Public security policies have led to the progressive militarization of the

PROGRESS ON RECOMMENDATIONS MADE BY THE NATIONAL HUMAN RIGHTS COMMISSION																							
Year	1990		1991		1992		1993		1994		1995		1996		1997		1998		1999		2000		Total
Half	1o.	2o.	3o.	4o.	5o.	6o.	7o.	8o.	9o.	10o.	11o.	12o.	13o.	14o.	15o.	16o.	17o.	18o.	19o.	20o.	21o.		
Recommendations Made	33	51	75	110	143	117	151	116	48	93	63	53	84	42	87	49	65	48	56	2	24		1,510
Authorities and Bodies	42	55	93	133	149	123	166	139	56	103	77	62	109	56	102	67	78	59	76	4	30		1,779
Not Accepted	3	2	1	2	1	1	4	3	2	4	3	1	4	10	10	7	8	5	16	3	1		91
Accepted with Proof of Total Compliance	39	50	85	121	139	111	133	106	41	86	55	48	75	26	64	33	35	19	42	1	3		1,293
Accepted with Proof of Partial Compliance	0	2	5	9	6	6	18	20	8	7	14	5	22	15	22	26	35	35	35	0	15		305
Accepted with No Proof of Compliance	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	2	-	2		5
Accepted with Unsatisfactory Compliance	-	1	2	1	3	5	11	10	5	6	5	8	8	4	6	1	-	-	-	-	-		76
Accepted in Time to Present Proof of Compliance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2		2
In Time to Be Answered	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7		7

**Source:** CNDH 2000 Report, p. 239, <http://www.cndh.org.mx>

federal government's police forces. This is the case of the Attorney General's Office's investigators and campaign against organized crime and drug trafficking; the Federal Preventive Police, made up of army troops and officers; and the recent decision to form elite military bodies to fight against kidnapping.

This polemic began with the appointment of General Macedo de la

Concha as federal attorney general, which has kept NGOs at arms length in the dialogue proposed by the Attorney General's Office for Human Rights.

6. A constitutional reform to facilitate the ratification of the Statute of Rome is urgent. This would make Mexico one of the first 60 nations to ratify and therefore allow it to participate in the General Assembly and have a judge on the International Criminal Court.

#### CONTRADICTORY POLICY

The following are signs of the indecisive or contradictory government policy in matters of human rights.

1. The federal government has been incapable of achieving ratification of some of its appointments, such as in the case of Dr. Mariclaire Acosta as "special ambassador for human rights and democracy," for whom the Vice

Ministry of Human Rights and Democracy was hastily created in the Ministry of Foreign Affairs.<sup>10</sup> This vice ministry's role is fundamental in the Inter-ministerial Human Rights Commission and to move toward the objectives of the agreement signed by the president and the UN High Commissioner for Human Rights.

The point where things became complicated was in the federal government's handling of the polemical case of General Gallardo—this complication was perhaps surmounted partially by his release—since from the time of her participation in the Mexican Commission for Human and Political Rights, Acosta had been the general's main defender before the CIDH. The government's partial compliance with the CIDH recommendation and disregard for the rest of it including pinpointing abuses of authority will continue to be controversial.

2. Dr. Ignacio Carrillo Prieto was named special prosecutor to investigate disappearances in the 1970s and 1980s. His appointment was received with skepticism given his background which, while it included activities in academia and the study of criminal law, also linked him to the public sector in places such as the Ministry of the Interior.

Nonetheless, to shore up the special prosecutor's office's credibility, the government offered to create a citizen's council that still has no head. But, in addition to the objections to the specific individual appointed, a shadow hangs over the office itself because of the negative precedents of other special prosecutor's offices created to investigate three assassinations in 1993 and 1994 (the murders of Cardenal Jesús Posadas Ocampo, PRI presidential can-

didate Luis Donaldo Colosio and PRI federal deputy and congressional caucus leader José Francisco Ruiz Massieu). None of these prosecutors has presented credible results.

3. The five months of dialogue between the Ministry of Foreign Affairs and NGOs have not been very productive. The discussions have been divided into five different working groups: harmonization of practice and legislation with Mexico's human rights commitments; indigenous rights; civil and political rights; economic, social and cultural rights; and vulnerable groups.

#### CONCLUSIONS

The only overall solution for the human rights problem in Mexico is an integral

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reform of the state that would reorganize public life and, through the very mechanisms of constitutional democracies, achieve:

- a) Transparency in government, ensuring that this be reflected in the quality of public services which as of now is far from being the case;
- b) Improvement in the quality of justice, currently quite a scarce commodity. Defective law enforcement and slow administration of justice has made justice itself

inaccessible for the ordinary citizen. Therefore, equality, both as a value and as a result of the state's guarantee of opportunities, and effective channels for the distribution of wealth are still frankly a utopia.

Significant steps forward have been made in opening up society, as can be seen in an increasingly intense public debate and more professional, critical media. Social organizations, for their part, have learned to survive and maintain their permanent monitoring of some—though few—specific aspects wherein the habitual behavior of the state and its agents injure and offend the population. Pluralism in Mexican society is more an expression of opposing ideological tendencies' opinions

on isolated issues than a legal supposition recognizing the value of all voices and opinions about exclusion, intolerance and discrimination. Mexico's institutions include the representation of the broadest collection of political forces in elected posts. Lastly, authorities on different levels have begun initially, but I am certain irreversibly, to be accountable for their actions.

While there have been significant, historic advances in the population's exercise of their civil-political rights, the state still has a long way to go in terms of sustained exercise of the rest of the

citizens' fundamental rights and public freedoms; covering that distance would create a better quality of life for the great majority of Mexico's inhabitants. **MM**

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#### NOTES

<sup>1</sup> See Juan Francisco Escobedo Delgado, "El régimen cerrado y sus amigos. De la criptocracia a la democracia," *The University Journal* vol. 2, no. 1 (Universidad Anáhuac del Sur) (winter 2001), and "La gobernabilidad autoritaria en México: Los años del salinismo," *The University Journal* vol. 1, no. 2 (Universidad Anáhuac del Sur) (spring 2001).

<sup>2</sup> Francisco Javier Acuña Llamas, "Estado de derecho y derechos humanos," *Aportes para el debate político* (Bogotá: Fundación Friedrich Naumann Stiftung-Perfiles Liberales, 1996), pp. 112-178.

<sup>3</sup> Francisco Javier Acuña Llamas, *La CNDH, una institución a medio camino. Propuestas para su urgente transformación* (Mexico City: Grupo Mandala Editores/Universidad Anáhuac del Sur, 1999), pp. 206-208.

<sup>4</sup> See two different evaluations of this constitutional reform in Miguel Pérez López, "La autonomía alcanzada. La reforma del marco constitucional de los órganos protectores de los derechos humanos," *Quórum* 68 (1999), pp. 49-63, and Francisco Javier Acuña Llamas, "Los derechos humanos en el México de fin de siglo. Reseña de la reciente y magra reforma del artículo 102B de la Constitución," *Quórum* 68 (1999), pp. 35-48.

<sup>5</sup> Thesis P. LXXVII/99, *Gaceta del Semanario Judicial de la Federación*, vol. X, ninth period (November 1999), p. 46.

<sup>6</sup> Rodolfo Montiel and Teodoro Cabrera were victimized for opposing excessive logging of local forests. [Editor's Note.]

<sup>7</sup> General Gallardo had been in prison for eight years on trumped-up charges because of his role as a dissident in the Mexican

army and his campaign for the creation of a military ombudsman. [Editor's Note.]

<sup>8</sup> After the Zapatista National Liberation Army (EZLN) march to Mexico City in February 2001, Congress passed changes to the constitution and legislation on the indigenous population that were very different from the proposal originally agreed upon by the government and the EZLN and representatives of indigenous peoples from all over Mexico in San Andrés Larráinzar in 1997. This led the EZLN to declare that the dialogue had been broken again, putting an end to negotiations. [Editor's Note.]

<sup>9</sup> The Miguel Agustín Pro Human Rights Center has been one of the most combative and critical of the government and official human rights commissions, particularly the federal one and that of the state of Chiapas. [Editor's Note.]

<sup>10</sup> Dr. Acosta has a long history in the fight for human rights in Mexico; she was president of the Mexican Academy for Human Rights and the first director of *Voices of Mexico*. [Editor's Note.]