

The Constitutional Reform On Human Rights

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On June 10, 2011, the most profound, far-reaching constitutional reform on human rights in contemporary Mexican history was published in the *Diario oficial de la federación* (Federal Official Gazette). This marked the end of a long legislative process which resulted in amendments to 11 articles of Mexico's Constitution.

The approval of these changes begins a new stage in the defense and promotion of human rights, enormously benefiting the Mexican population, since it seeks to reverse the legislative tendency to increasingly limit individual rights on

the pretext of achieving greater public security. The reform also strengthens the work of public human rights agencies.

The aims of the constitutional reform are the following:

- 1) to recognize human rights in the Constitution;
- 2) to achieve a state commitment to human rights education;
- 3) to create a new institutional design for the public bodies mandated to protect and defend human rights;
- 4) to give public human rights agencies competency to deal with labor issues;
- 5) to establish a new system for accountability before the Senate; and

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- 6) to foster greater impact of international instruments in the new national legal landscape.

The constitutional obligation that the Mexican state will have from now on of strengthening an educational process on human rights is a fundamental decision for ensuring that current and future generations can know not only their rights, but also the legal mechanisms for making them effective in public service or as members of society. This is because, while investigating human rights violations is undeniably useful, in a country like ours, it is of capital importance to have prevention strategies with effective education and training for public servants and society in general.

By recognizing the importance of inculcating all sectors of the public, especially children and young people, with the content of human rights, it will be possible for society to live together better, as well as to train future public servants and society at large about knowing and respecting human rights and how to make them effective.

The reform also strengthens and updates the Constitution's system for protecting rights, as well as fulfilling the commitments that have been made through Mexico's signing and ratification of international treaties in this field. It is worthy of note that, down through our history, our country has made a little over 100 international commitments in the form of human rights treaties, covenants, or conventions, which require full compliance.

The central point of this change is respect for dignity and the means to defend it through human rights. The reform strengthens the *pro personae* principle, according to which interpretation of norms must favor human beings as much as possible. In applying these norms, the principle of non-contradiction with the Constitution must also be observed; not observing it would call for what is known as an action of constitutional control.¹ In this same sense, norms set up to protect human rights must be interpreted according to the international treaties Mexico has signed and ratified; not observing it would call for what is known as an action to control for compliance with conventions.²

TOWARD A NEW INSTITUTIONAL DESIGN

The new institutional design of the public agencies that exist to protect and defend human rights has two main thrusts. The first is strengthening their autonomy, and the second is

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to provide them with competency in labor issues, thus broadening out the sphere of protection for individuals in our country. Also, the National Human Rights Commission's faculties for investigating grave human rights violations were also strengthened, thus avoiding duplicating investigations: it will no longer be the Supreme Court that hears a brief, a procedure that was a hang-over from the nineteenth-century, and which in most cases ended without having any effect whatsoever.

The agencies that defend and promote human rights are also given the competency to deal with labor matters. This makes it possible for them to hear and resolve complaints about administrative labor officials' alleged violations by action or omission that injure workers' human rights; this closes a long-open gap in our country's institutional life, and answers a demand from society.

Undoubtedly, since their origin, labor rights have been social human rights. However, since 1990, the right of public human rights commissions to intervene to defend them had not been recognized. Fortunately, this has been overcome and a new space for defending the population against any kind of abuse in this area has opened up.

BRINGING A CASE OF UNCONSTITUTIONALITY TO DEFEND THE TREATIES

On September 14, 2006, an amendment to Article 105, Subsection 2 of Mexico's Constitution was approved, adding subdivision g), stating that the CNDH had active legitimacy to be able to bring a case arguing unconstitutionality when laws and treaties passed by Congress contravene individual guarantees. The addition also confers this faculty on local human rights protection agencies with regard to state legislation; this is a huge step forward in the effective guardianship of human rights.

In the more recently approved reform, the possibility of exercising this right to bring a case of unconstitutionality is strengthened, but now also against laws or international treaties that

endanger human rights guaranteed in the Constitution or treaties our country is already a signatory to. This will foster more coherence between the international commitments we take on in treaties or international covenants and our country's laws.

By incorporating this new aspect, legislators sought to protect constitutional norms as an effective way to maintain and consolidate the rule of law. With the possibility of bringing an action of unconstitutionality before the Supreme Court, the CNDH puts on the table for discussion the possible violation of person's rights, and it is the court that determines if a law violates human rights or not.

This new attribution is not contrary to its character or functions, because, although this action is a form of procedural constitutional control with the characteristic that its resolutions are abstract and have *erga omnes* effects (that is, the effects of general application if constitutional prerequisites have been fulfilled), the CNDH is not the body that makes the decision. It will exclusively have the faculty of prompting the body that has constitutional jurisdiction to begin a proceeding in which the latter will hand down the decision.

With the new reform, it is also possible to review compliance with conventions, that is, to verify if the general norm contradicts international treaties. This is in accordance with repeated requests by international human rights bodies to work on harmonizing legislation to ensure that laws are consistent with the international treaties that are binding for our country. The harmonious interpretation of those laws means that they must be consistent with the Mexican state's international commitments.

It should be noted that the CNDH has the legitimate authority to challenge local legislation; this is consistent with the national protected nature of human rights, recognized in Article 1 of the Constitution. This means that if local legislation contradicts human rights, the CNDH can intervene, as can the local human rights protection agency.

Being able to bring a case of unconstitutionality is a valuable instrument for the rule of law, which updates the prin-

ciple that the Constitution is the supreme law of the land and guide for our national life. Strengthening the CNDH's ability to do this is a call to favor its guardianship of the defense of human rights.

AUTONOMY OF PUBLIC AGENCIES FOR THE DEFENSE AND PROMOTION OF HUMAN RIGHTS

Another aspect that strengthens these bodies is constitutional autonomy, which prevents their resolutions from being subject to review or scrutiny by a higher authority; they can only be reviewed publicly by society and the media.

The autonomy of public bodies that protect and defend human rights is closely linked to the way the people who head them are selected. The second addition to Article 102, Part B stipulates that state Constitutions and the Mexico City Federal District's Statute of Government must establish and guarantee the autonomy of human rights bodies. This norm includes a step forward since it guarantees autonomy to all human rights defense bodies and their equivalents in the states.

NEW REGIMEN FOR ACCOUNTABILITY

The reforms to Article 102 are particularly far-reaching since when recommendations are not accepted or complied with, the authorities or public servants who do so must publicly argue the basis for their refusal. In addition, on the prompting of human rights bodies, the Senate (or the Permanent Commission of Congress when the former is in recess) or state legislatures, depending on the appropriate jurisdiction, can subpoena the responsible officials or public servants to appear before them to explain the reasons for their refusal.

It would be worthwhile to analyze the obligation now imposed on authorities to make public the bases and reasons that led them to reject the recommendations by human rights protection agencies. This obligation is an appropriate instrument to inform and involve society in order to foster its awareness, and in the last analysis, its participation in the actions that assert full respect for human rights. To the extent that the public becomes more involved, it will inform authorities of its opinions and will exercise greater social control over government, which will contribute to strengthening democracy.

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In accordance with its constitutional mandate, the CNDH issues recommendations and reports about matters under its jurisdiction in the defense of human rights in order to seek respect for rights that have been violated; restitution for damages where deemed appropriate; guarantees that the violations will not be repeated; and sanctions under the law for public servants involved. Since its reports and recommendations are not binding, its effectiveness depends to a great extent on the good offices of federal and state authorities.

When faced with authorities' refusal to accept its recommendations, according to the national legal system and established international principles regarding the status and functioning of national human rights protection and promotion agencies, known as the Principles of Paris, the CNDH has no recourse but to address itself to the public, directly or through the media, and disseminate the situation. This is because it is a legal body that issues opinions.

If non-acceptance of CNDH recommendations continues, and independently of whether the commission itself files complaints against the authorities involved, the victims must follow in a parallel fashion all the public administration procedures available to them. This means they would fulfill all the procedures and obtain sufficient evidence and proof to substantiate that an illegal act took place that had a negative impact on the person whose rights were violated. It should be pointed out that this also has an impact on the impunity that has created so much discontent in our society.

In this context, the reform seeks to ensure that the Senate or, in its absence, the Permanent Commission of Congress, participates as a guarantor of respect for human rights and broadens its advocacy of them through the express attribution of subpoenaing the head of any federal institution that has rejected CNDH recommendations. The aim of this action is to hear the causes, reasons, and basis for that refusal in the cases relevant to its representation; to evaluate public authorities' performance; and to detect systematic patterns of human rights violations and structural flaws with an impact on the lack of respect for human rights.

This generates another sphere of observation and participation by society as a whole since legislators, as popular representatives in a democratic system, will also be able to see the effectiveness of the non-jurisdictional system of human rights defense. They will be able to diversify their relationship with the executive and freely evaluate events that are important for society and the political situation. They will be able to know the real condition of human rights and rights estab-

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lished in the country, strengthening their legislative functions, their control over budgets, and their limits on government actions and abuses of power that would contradict the progress attained up until now in this area.

In this sense, the legislature needs to become involved in the situation of those who appeal to the CNDH, carrying out a legal and political analysis of the cases it deems pertinent through a collegiate, impartial, plural body, knowledgeable in the topic, such as the human rights commissions of both chambers of Congress. This undoubtedly strengthens the institutional task of calling to account public servants who do not comply with or accept a recommendation, so they explain the reason for their refusal, putting an end to the idea that nothing would happen if they do not accept or comply. This is a real exercise of the system of checks and balances that will make it possible to put the actions of these public servants into the appropriate context and give rise to more open public scrutiny, thus benefitting society.

Undoubtedly, this will strengthen the work of public human rights defense and protection agencies by giving greater legal effectiveness to their recommendations without prejudicing the institutions' character, since they remain part of the non-jurisdictional system of human rights protection.

FINAL THOUGHTS

The road before us still presents itself with many vicissitudes, but the safest bet the Mexican state can make is to develop and strengthen institutions. This will be achieved through each institution's training and fulfilling the legal function it was created for, always seeking to act in strict compliance of the law to make the national project all Mexicans aspire to a reality.

The objective of the constitutional reform is to ensure the well-being and dignity of all persons. To that end, it gives state institutions new tools that will decisively contribute to reducing arbitrary acts or unjustified omissions by authorities to

the detriment of the public. To achieve this, we must join forces. Committed together, citizens, the state, organizations, defenders of civil society, and communicators are all called upon not to rest until we are able to live together in a culture of legality in effective conditions of security, equality, and respect.

This constitutional reform is our generation's best legacy to society and its institutions. Since its publication, we have entered a new stage with an institution increasingly close to society and defending the victims of rights violations. I hope that this is the point of departure for a period that will bring tangible results in the daily life of our society, and contribute to fortifying the respect for human rights, not only on a federal level but also in local legislation so they can strengthen the work of the state human rights commissions and special prosecutor's

offices, which are part of the efforts to safeguard the rights of all Mexicans, not as a simple theoretical aspiration, but as a demand so that justice and freedom can prevail. **MM**

NOTES

¹ In Mexico, constitutional control is exercised by the Supreme Court and federal judges to safeguard the Constitution. Among the control mechanisms we have are constitutional controversies, unconstitutionality actions and the writ of *amparo*.

² An action to review compliance with conventions is a legal review to verify if the state in question respects the principles of interpretation and application that must prevail in matters of human rights.