

Human Rights in Mexico after the Universal Periodic Review

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The universal periodic review (UPR) is a mechanism established by the United Nations Human Rights Council to evaluate its member states every four years. Mexico's situation was evaluated in 2009 and 2013. The most recent evaluation recognized that the Mexican state had advanced in the protection of the fundamental rights of individuals, especially in the legislative and judicial fields, by complying with the majority of the recommendations it had

received in 2009. However, in 2013, it received almost double the number of recommendations as in the previous cycle.¹ This balance sheet suggests that in the last four years, the country made important strides in human rights issues, but that certain problems persist and others have emerged or were not noted during the previous review.

Given the alarming number of feminicides and murders of journalists and human rights defenders in Mexico in recent years, a considerable number of the delegates to the 2013 UPR agreed to recommend that the country make greater efforts to guarantee an existence free of violence, making effective use of the gender alert mechanism. The recommendation was also made that conditions be created so that those work-

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ing in the fields of journalism and rights defense be able to do so without putting their lives at risk. In addition, they recommended that the Mexican delegation fight against impunity when these social groups have their rights trampled, particularly their right to life and to the freedom of expression.

With regard to the right to live in freedom and to due process, in the case of persons detained and imprisoned, the recommendation to the Mexican state was that it eliminate the practice of preventive custody, known as *arraigo*, improve the prison system, and be more effective in the fight against forced disappearances, torture, arbitrary detentions, and human trafficking. The review also emphasized the grave violations of migrants' human rights.

Since some of these violations have been perpetrated by members of the armed forces, who generally go unpunished when judged in military courts, the review recommended that the amendment to Article 57 of the Military Code of Justice be completed to eliminate the ability of military tribunals to deliberate on cases of human rights violations by members of the armed forces against civilians. This recommendation is in agreement with the August 22, 2012 Mexican Supreme Court ruling that this practice was unconstitutional, after the Inter-American Human Rights Court handed down a decision in the same vein on the 2009 case of Rosendo Radilla, and ordering the article be eliminated from the Military Code of Justice.

According to the Ministry of National Defense, since 2009, 317 cases have been handed over to civilian investigators, and military tribunals have handed over 226 criminal cases to civilian courts to be tried. In any case, this limitation of military jurisdiction has not been enough to slow abuses by army and navy personnel against the civilian population. Proof of this is that between 2006 and 2012, the National Human Rights Commission (CNDH) has received 7 441 complaints against the armed forces. At the same time, despite the large number of complaints, it should be noted that the CNDH has not been very efficient: it has only issued 113 recommendations.²

With regard to economic, social, and cultural rights, an important number of 2013 UPR delegates recognized the efforts of the Mexican state to foster government plans and programs to lower poverty and hunger levels, as well as to provide universal health care and basic education.

Outstanding among the recommendations about the rights of indigenous communities were those that favored actions to improve their indicators of well-being, particularly for the

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women and children of those communities, as well as to respect their labor rights and the right to be consulted in the case of the creation of economic projects that would affect their natural surroundings, in accordance with International Labor Organization (ILO) Convention 169. It should be mentioned that participants requested that Mexico eradicate discrimination against Afro-descendants.

The findings also recommend that the Mexican delegation withdraw its reservations *vis-à-vis* certain international instruments to protect human rights and ratify those that it still has not ratified, in addition to adjusting national legislation to conform to those instruments and local/state legislation to federal law. In this sphere, even if the Mexican state ratifies the few instruments it still has not ratified, or withdraws the few reservations it maintains regarding others, in a controversial September 3, 2013 ruling, Mexico's Supreme Court stipulated the limitation of the application of international human rights treaties in the country. While the nation's highest court has conferred constitutional rank to these treaties in accordance with the June 10, 2011 amendment to that effect, it has also decided to limit their scope when they contradict what is laid down in the Constitution. With that ruling, the Supreme Court has put to one side the *pro persona* principle, central to that amendment, which mandates the application of the broadest human rights protection recognized in the Constitution and international treaties.

As the review *Foro jurídico* (Legal Forum) put it,

Initially, the proposal consisted of the idea that human rights established in treaties should prevail if they benefitted the individual, even if there was a contradiction with the Constitution, for example, around issues like preventive custody of alleged criminals, preventive forced incarceration, seizure of assets, or the prohibition of ministers of religion exercising their [passive] right to vote, acts that are internationally considered illegal. However, in the end, the conclusion was that this type of acts, expressly included in our Constitution, prevail over the human rights stipulated in the 171 international treaties that recognize human rights and that Mexico has signed.³

In this scenario, according to Supreme Court President Juan Silva Meza, it will fall to judges to integrate international norms into national law through a dialogue about jurisprudence, in order to understand and harmonize the legislation to create better protection for the individual.⁴ It definitely will be up to the criteria of the judiciary to determine broad or restricted protection for Mexicans' fundamental rights since, on November 12, 2013, the Supreme Court threw out the proposal to try appellate judges for not complying with their obligation of applying the most favorable national and international legal criteria to protect the human rights of those on trial.

As can be noted, the progressive 2011 constitutional reform, which stipulates the broadest possible protection for human rights, has been limited through jurisdictional means. Parallel to this, as a corrective measure for judges' discretion or omission, on October 29, 2013, Article 97b of the Federal Criminal Code was amended to give Mexico's president the faculty of granting a presidential pardon "when consistent indications exist of grave violations of the human rights of the sentenced individual." Based on this new attribution, President Enrique Peña Nieto pardoned Professor Alberto Patishtán on October 30 of last year. Although this was a just act, since the Tzotzil teacher had been sentenced to 30 years in prison for a crime he did not commit, it is cause for concern that in human rights matters, the judiciary is supplanting the legislative branch, and the executive branch is replacing the judiciary. In this scenario of the invasion of attributions of one branch by another, it should come as no surprise that the armed forces have recently demanded to carry out the functions of police and investigative duties in cases involving their work in the fight against organized crime; these duties correspond, in principle, both to public security institutions and attorneys general, and not to the army or the navy.

The ostensible shortcomings of police forces and attorneys general in guaranteeing the rights of the population, including those of migrants, to public safety within our borders, because of their inability to control organized crime or due to complicity with these organizations, does not justify the

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armed forces' taking over policing and prosecutorial tasks, much less the civilian population opting to form armed self-defense groups. Clearly, both phenomena are desperate reactions by the federal government and Mexican society, respectively, which, while understandable, are undesirable and even counter-productive. This is because, on the one hand, the idea is to legitimize what has already been shown to be the ineffective militarization of the fight against organized crime, often accompanied by constant human rights violations. On the other hand, the creation of armed groups of civilians brings into question the state monopoly on the legitimate use of violence, and also puts their members at risk, since they perform functions for which they are not prepared.

Given this situation, the Mexican state must strengthen the national public security system and foster more effective collaboration with other governments to deploy on a regional, hemispheric, and global level a comprehensive fight against organized crime, which has expanded its illicit dealings from drug trafficking to contraband, human trafficking, kidnapping, and extortion.

As can be inferred from the recommendations to the Mexican delegation at the 2013 UPR, and as a result of the inconsistencies of the national strategy to protect human rights implemented until now, the challenges to the Mexican state in this field are diverse and of differing degrees of difficulty. Meanwhile, in response to those challenges, in October 2013, the president sent Congress five bills to strengthen human rights protection in the following areas: limiting state action in suspending rights, adjusting the crime of forced disappearance to international standards, avoiding discriminatory practices against military personnel with HIV/AIDS, withdrawing Mexico's reservations to different international treaties involving human rights, and regulating the procedure whereby the federal executive will be able to exercise its faculty of expelling foreigners from the country, restricting it to cases in which those individuals constitute a threat to national security or public order.⁵

Another bill sponsored by the president should be mentioned, sent during the same month, and which would establish equality in the electoral gender quota, by obliging political parties to ensure that 50 percent of their congressional candidates are women.

These bills are part of the 2013-2018 National Development Plan; it lists as its goal 1.5 the guarantee of respect and protection for human rights and the eradication of discrimination. To do that, it sets out the following strategies: imple-

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menting an over-arching, multi-administration government human rights policy; dealing with violence against little boys and girls and teens in all its forms; offering comprehensive services to victims of crimes, or those affected by them; and establishing a policy for equality and non-discrimination.

The very first line of action in the strategy to foster a multi-term government human rights policy consists of “establishing a program aimed at the promotion and defense of human rights, including civil, political, economic, social, cultural, and environmental rights.”⁶

This comprehensive program will be developed and published in 2014, and it is to be hoped that the recommendations made to the Mexican delegation at the 2013 UPR will be accepted in due time, as well as incorporated into the spe-

cific goals of the program itself. If the 2013-2018 National Human Rights Program is coherently and effectively executed, Mexico can aspire to a substantive decrease in the rate of human rights violations and to guaranteeing a decent life for Mexican men and women. ■■

NOTES

¹ In 2009, the Mexican state received 91 recommendations during the first UPR round, of which it accepted 83. In 2013, it received 176, and in 2014 it will announce which ones it considers acceptable. The details of the recommendations to the Mexican delegation in October 2013 can be consulted in Spanish at “Examen periódico universal México. Recopilación de documentos sobre la segunda sesión del Examen periódico universal,” <http://epumexico.wordpress.com/>, accessed November 27, 2013, and in English at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MXSession17.aspx>.

² Yetlaneci Alcaraz, “México en Ginebra. El juego de la simulación,” *Proceso* no. 1930, October 27, 2013, p. 50.

³ “Otorga la SCJN rango constitucional a derechos humanos previstos en tratados internacionales,” *Foro jurídico* no. 121, October 2013, p. 42.

⁴ “Para proteger derechos humanos hay que armonizar leyes y convenios: Silva Meza,” *La Jornada*, October 12, 2013, p. 11.

⁵ “Envía Peña Nieto iniciativas de DH,” *El Universal*, October 23, 2013, p. A14.

⁶ Gobierno de la República, “Plan Nacional de Desarrollo 2013-2018,” p. 110.