

Mexico

The ineffectiveness of the Mexican system of justice allows most violations of human rights to go unpunished. Ordinary courts lack jurisdiction to try members of the armed forces for violations of human rights committed against civilians. This erodes the independence of these courts. During 1999 frequent violations of due process rights continued in the country and especially in the states of Chiapas, Guerrero and Oaxaca. The government passed a series of legislative measures that weaken individual rights and undermine the ability of the ordinary judge to effectively impart justice. The powers of the Public Prosecutor have also been significantly increased to the detriment of judges' powers.

Mexico is a federal republic with 31 states and a Federal District as a capital city. The Constitution provides for the separation of powers and the judicial function is assigned to a court system. The bicameral national assembly holds legislative power and is composed of a 500-seat Chamber of Deputies and a 128-seat Senate. The President of the Republic is at the same time the head of the government. He holds the power to appoint the Attorney General and the justices of the Supreme Court.

Governmental elections were held in the state of Mexico, the most populous in the country, in July 1999 and resulted in the victory of the ruling Revolutionary Institutional Party (PRI). Political parties also began preparations for the presidential election scheduled for the year 2000.

Human Rights Background

During 1999 most of the problems regarding the protection of human rights persisted in Mexico despite significant improvements in certain areas. The general inefficacy of the judicial system to promptly prosecute and try offenders is enhanced by the culture of impunity prevailing in almost all public offices.

In 1999 Mexico's human rights record continued to be under the spotlight of the international community. The UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions visited the country between 12 and 24 July 1999. The UN High Commissioner for Human Rights, Mrs. Mary Robinson, also visited Mexico in November 1999. A Memorandum of Understanding for a Technical Co-operation Programme was signed by the High Commissioner and the Mexican Government. The UN Human Rights Committee examined Mexico's report and adopted its Concluding Observations on it on 27 July 1999. Mexico's periodic report pursuant to the provisions of the International Covenant on Economic, Social and Cultural Rights was examined by the respective monitoring Committee on 08 December 1999. For its part the International Commission of Jurists (ICJ) sent a mission to the country between 9 and 19 March 1999, focusing on the human rights situation in the Federal District and the states of Chiapas, Guerrero and Oaxaca, as a follow up to their previous visit in April 1994.

Human rights groups and defenders continue to be the target of harassment by officials of different government agencies. Taking as a pretext the campaign against the booming common criminality, government officials accused human rights organisations of defending and protecting criminals. At the same time the government continued to maintain its tight regulations on visa arrangements for foreigners who want to carry out observation or other

human rights-related activities in the country. This has reportedly caused serious inconvenience to the work of these groups and is arguably designed to prevent them from carrying out their task of defending human rights. In what constitutes a positive sign, during September and October a total of thirteen foreigners summarily expelled in 1998 won a judicial battle and their expulsion was revoked.

In late November Mexican police, with the support of the US federal police, discovered mass graves at a ranch near Ciudad Juarez on the border with the US. As they dug they found some of the 100 bodies they expected to find in the grave, which were identified as FBI informants who were killed, presumably, by the Juarez drug cartel. More bodies are expected to be found as the investigations continue.

Impunity

The human rights situation in Mexico continued to be precarious, although some improvements have been made. In what constitutes one of the few positive steps taken to put an end to the impunity enjoyed by police officers who commit human rights violations, twenty people were convicted by a Federal Court for the December 1997 massacre of forty-five people near the village of Acteal. Federal prosecutors have also taken up thirty-four cases from the state level in relation to the Acteal massacre. A number of people have been charged with murder, kidnapping and torture. This includes several state prosecutors for failure to prosecute cases in which enough evidence existed. However, human rights groups said that much more needs to be done in this case to effectively provide justice to the victims. The fact that the intervention of the federal judicial authorities was necessary to carry out the investigations and the trials, highlighted the inability of the states' judiciary to function effectively and independently.

In another positive development, the National Human Rights Commission (Comisión Nacional de Derechos Humanos), created in 1990 originally as an agency within the Ministry of Home Affairs, was granted a higher degree of autonomy, as recommended by a number of national and international human rights groups. Although a 1992 constitutional amendment gave this commission an autonomous status, the Commission's chairman and the other commissioners continued to be appointed by the President with the consent of the Senate and its powers were limited to matters not related to labour, judicial or electoral issues.

The bill amending Article 102 of the Constitution - still to be approved by the states' legislatures - was passed towards the end of 1998. The National Human Rights Commission will still be prohibited from intervening on matters related to the federal judiciary and, according to the amendment, this prohibition will encompass the activities of the states' judiciary as well. Another important change is in regard to the appointment procedure for the members of the Commission and its chairman. They all will now be appointed by the Senate, by a two thirds majority vote. The serving term of the Commission's chairman will be a renewable five-year period. The Commission has also been granted autonomous legal personality for economic and management purposes. Finally, the Commission will present a periodic report to parliament. However, its findings and recommendations will remain of a non-binding character.

There is also a draft for a federal law for the prevention and sanction of forced disappearances which was presented during the second part of 1999 in the Chamber of Deputies and is still pending for discussion and approval. If passed this law will provide a

useful instrument in the fight against impunity for perpetrators of forced disappearances in the country.

Notwithstanding the few positive developments stated above the main problems that prevent the judiciary from imparting effective justice to the victims of human rights violations still persist. The judicial system fails to provide victims and all citizens with effective protection and adequate recourse for the protection of their rights. The most outstanding failure of the ordinary justice system is in regard to the impunity granted in practice to military officers who have committed common crimes against civilians. The Military Code of Justice establishes that the military tribunals have jurisdiction over common crimes committed by military officers "while on duty or for reasons related to their own duty" (Article 57). This vague formulation gives, in practice, wide powers to the military tribunals to try not only on-duty offences properly related to military functions, but also any other common crime committed by any military officer. This sweeping jurisdiction given to the military courts has already been observed by the UN Special Rapporteur on Torture in his report on his visit to Mexico in 1997, and has recently been highlighted again by the UN Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions when she concludes:

"The ineffectiveness of the justice system has given rise to violations of human rights. Their lack of jurisdiction to try members of the armed forces for violations of human rights committed against civilians erodes the independence of the ordinary courts".

The Special Rapporteur recommended that the Mexican Government "initiate reform aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts".

The intervention of federal prosecutors and tribunals to bring effective justice and put an end to impunity in the Acteal massacre highlighted the poor record of the judiciary at the state level to prosecute and try perpetrators of human rights violations. Poor training, corruption and peer influence among judges and prosecutors are some of the main problems which, matched with political pressure and violence, have accentuated the traditional impunity in the inner country. The ICJ mission found that disrespect for the due process of law and a correct administration of justice is more serious at the local and state level as magistrates are more vulnerable to pressure from local authorities and politically powerful groups. The mission also reported that the provisions of human rights instruments ratified by Mexico are not reflected in judicial decisions in general, and in particular at the state level, despite Article 133 of the Constitution. This article provides that "the state judges shall conform to the Constitution, laws and treaties notwithstanding contrary provisions in state's constitutions and laws".

Apart from the limitations on the ordinary courts as regards trying military officers, there are a number of other factors that limit the ability of the judiciary to impart effective justice and protect citizens' rights. Judges continue to accept tampered evidence and declarations obtained by torture in application of a questionable understanding of the "principle of immediacy", which normally requires them to be present at the moment the evidence is produced. Instead, many judges have been interpreting the principle as assigning greatest evidential weight to the first statement made by the suspect or accused, normally before the police and without the presence of his or her attorney.

Additionally, the number of arrest warrants issued by the judicial authority and not carried out by the police is still very high. This reveals the extent of the impunity existing in Mexico (see Attacks on Justice 1998).

The Concluding Observations of the UN Human Rights Committee

The UN Human Rights Committee expressed satisfaction at the adoption during past years of a series of positive steps, amongst them: the establishment of National Programmes for the Protection of Human Rights, the promulgation of the Federal Public Advocacy Act for the Prevention and Punishment of Torture and the granting of more independence to the National Human Rights Commission.

The Committee, however, expressed concern about the fact that "no institutionalised procedures exist for the investigation of allegations of violations of human rights presumed to have been committed by members of the armed forces and by the security forces, and that as a consequence those allegations are frequently not investigated".

The Committee observed that the criminal procedure established and applied in Mexico constitutes an obstacle to the implementation of trials before a judge, in the presence of the accused and at a public hearing. It should be further noted that among the last constitutional reforms adopted there was originally an additional one regarding Article 20 of the Constitution that would allegedly have permitted trials in absentia. This proposal was not approved in the end.

The Committee also expressed concern at the extension of the number of circumstances in which a person can be arrested without a warrant from a judge. Furthermore, the person arrested in "flagrant delict" can be held in custody by the prosecutor from 48 to 96 hours before they are presented to a judge. The Committee deplored that "arrested persons do not have access to legal counsel before the time when they have to make a formal statement to the Office of the Public Prosecutor" (paragraph 10). For further development see below.

The Judiciary

The federal judiciary is composed of the Supreme Court, the Electoral Tribunal, the Circuit Tribunals, the one-judge Circuit Tribunals, the District Courts, the Federal Council of the Judiciary, a federal jury and the tribunals of the states and the Federal District (Article 1 of the 1996 Law of the Judiciary).

Structure

The Supreme Court is composed of eleven justices and works as a plenary assembly or in two chambers. As a plenary, it has the power, inter alia, to deal with constitutional disputes and petitions of unconstitutionality, to review decisions by lower courts on constitutional matters and to review decisions of lower courts on petitions of Amparo (Article 10). The Supreme Court in plenary session also elects its president from among its members. The President serves in office for a term of four years.

The Law of the Judiciary entrusts to the Plenary of the Supreme Court the task of watching over the autonomy of the organs of the federal judiciary and of their members (Article 11). It also has the responsibility of approving the annual budget of the Supreme Court. The

President of the Supreme Court sends it to the President of the Republic who in turn passes it on to parliament for final approval. The President of the Supreme Court is also in charge of administering the budget.

The Federal Council of the Judiciary is in charge of the administration, oversight, discipline and organisation of the judicial career of the whole judiciary, except the Supreme Court and the Electoral Tribunal. The Council is composed of a total of seven members appointed as follows: the President of the Supreme Court who acts as its head, two members appointed by the Senate, one appointed by the President of the Republic and the rest appointed by circuit and district courts.

The Council is also tasked with the preservation of the autonomy of the organs of the judiciary and the independence and impartiality of its members. It prepares and presents the budget of the judiciary - except the budget for the Supreme Court - to the President and parliament for their approval.

Appointment Procedure and Security of Tenure

The President of the Republic enjoys wide power to prepare a list of candidates for justices of the Supreme Court, which is submitted to the Senate that makes the final choice. The presidential power in this regard has been pointed out as a probable source of undue influence on the functioning of the highest tribunal. The President can also instigate the procedure for removal or dismissal of justices of the Supreme Court. They are appointed to serve renewable periods of 15 years.

Judges of lower tribunals and courts are appointed by the Federal Council of the Judiciary. The judges of Circuit Tribunals and one-judge District Courts are appointed for a probationary period of 6 years and then subjected to a ratification procedure. They will enjoy security of tenure only if ratified in their posts, or otherwise if promoted to a higher tribunal. The six-year periods for which the judges are appointed may not be suitable for guaranteeing their independence, especially if after such a period they have to submit to a ratification procedure. In general, judges avoid ruling against the authorities in very sensitive cases. When they do so or refuse to abide by pressure from outside while performing their duties, they are, reportedly, harassed. The well-respected non-governmental organisation (NGO), Mexican Commission for the Defence and Promotion of Human Rights, has reported the case of Judge Claudia Campuzano, accused of obstruction of justice by the Public Prosecutor in the Federal District of Mexico because she ordered the release of a prisoner who was being held on foot of a declaration obtained by torture as the sole evidence, as an example of what is reportedly a common practice.

The resources of the judiciary come from the national budget, but it is the President who has the power to prepare and send to the legislature the proposal for the budget for every year. The President also has the power to instigate the amendment or total reform of the Law of the Judiciary (Ley Organica del Poder Judicial).

The Independence of the Public Prosecutor

The Office of the Public Prosecutor is an agency of the federal executive (Ley Orgánica de la Procuraduría General de la República de 1996). The Attorney General (Procurador General) is appointed jointly by the President of the Republic and the Senate, but the institution is part

of the structure of the executive branch on which it depends for financial and personnel resources. This dependency has been pointed to as the source of the lack of independence of prosecutors in the taking of decisions on whether to prosecute or not any given offender.

According to Article 21 of the Federal Constitution the prosecutor holds a monopoly over investigations and the prosecution of offences. Until the constitutional reform of 1994 there was no possibility for the victim to legally challenge the prosecutor's decision should the latter decide not to prosecute an alleged offender. The 1994 constitutional amendment of Article 21 provides that "the prosecutor's decision not to prosecute or desist from the prosecution of an offence can be judicially challenged as determined by law". However, the necessary legislation to develop the constitutional provision was never enacted which has led to its practical lack of implementation. Some sought to implement the provision by using the procedure of amparo petitions (a special remedy to protect individual constitutional rights) before the ordinary courts which resulted in diverse and conflicting jurisprudence on the matter. While some judges clearly supported the idea of using amparo procedures to protect victim's rights and willingly granted the petition ordering the prosecutor to reopen investigations, others thought otherwise. This conflicting jurisprudence was overcome by a Supreme Court decision, following the recommendations made by the Inter-American Commission on Human Rights, adopting the view that amparo petitions were suitable for use in these cases. The Supreme Court's decision also established that ordinary criminal courts have jurisdiction to hear these kinds of petitions. Although this decision was very much welcomed, it has widely been seen as insufficient given the intrinsic limitations of amparo petitions. It has been reported that prosecutors are now avoiding taking any formal decision whether to prosecute or not for a given offence, causing the investigations to slow down and continue until the Statute of Limitations applies in the case.

The excessive discretionary power of the prosecutor to decide whether or not to prosecute in criminal cases, and the lack of legal guarantees for the victim to take action independently from the prosecutor amounts in many cases to a virtual denial of justice. As the UN Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions observed in her report of her 1999 visit to Mexico:

The practice and conduct of federal and state prosecutors' offices fall short of the guidelines laid down in paragraphs 12 and 13(b) of the Guidelines on the Role of Prosecutors adopted by the Eight United Nations congress on the Prevention of Crime and the Treatment of Offenders. These guidelines provide that prosecutors shall perform their duties fairly, consistently and expeditiously, respecting and protecting human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. In the performance of their duties prosecutors shall protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances.... In the cases examined by the Special Rapporteur in this report, the investigations were compromised, inter alia, owing to lack of transparency, deliberate cover-ups, selectivity in apprehending suspects and peer pressure among the legal establishment. The discretion placed with the Public Prosecutor to decide whether an investigation can be initiated in a criminal matter has resulted in gross injustice, resulting in impunity for perpetrators of human rights violations.

The Special Rapporteur recommended in this regard that Mexico "take measures to strengthen the independence of the Offices of the Public Prosecutors, from the federal to the local level" and to "grant the victims of human rights violations or their families a legal

mechanism by which they can file criminal complains, independent of the Public Prosecutor's Office".

The powers of the prosecutor have also been widened in recent years under pressure to achieve effective results in fighting against the perceived growing criminality. These powers were widened to the detriment of the protection of the human rights of suspects or accused persons and further constitute an invasion of judicial functions by the Public Prosecutor who, after all, depends on the executive power. Certain powers given to the prosecutor may be construed as limiting the judge's powers during trials. For example, judges of criminal tribunals cannot order the production of evidence they think necessary in order to establish the individual responsibility of a suspect or accused. They cannot either start the proceedings without the prior instigation of the prosecutor or continue the case if the prosecutor has withdrawn charges. Although the prosecutor's decisions can be judicially challenged, as described above, the available procedure is not quick enough to be an effective recourse.

The prosecutor also enjoys wide powers to arrest persons suspected of having committed an offence during the pre-trial investigations stage. Before 1993 the arrest of a person was not permitted except pursuant to an arrest warrant issued by the judicial authority, except in flagrant cases or urgent circumstances, when no judicial authority existed in the locality. In all cases, the arrested person should be presented before the judge without delay. Now, however, the Public Prosecutor can also order the arrest of a person without a judicial order in "urgent cases", "serious cases" and to prevent the suspect absconding from justice. The laws give the prosecutor and police officers wide latitude to arrest persons merely on the fear that the suspect in question may abscond from justice.

A law passed in April 1999 widens the meaning of "flagrant situations" in which the arrest of a person without a judicial order can be made the moment he or she commits the crime or immediately afterwards. The 1999 law permits the arrest of the person in question even 72 hours after the offence is committed without an arrest warrant, thus facilitating the detention of persons on the initiative of the prosecutor. Further, in "flagrant" and "urgent" cases the prosecutor can hold the detainee for 48 hours before presenting him or her to a judge. This period is doubled when it is a suspect of organised crime who is concerned and this facilitates the violation of the rights of the detainee who cannot see his or her attorney during that period of time.

A number of legislative measures adopted in recent years, purportedly to facilitate the fight against common and organised crime, have resulted in the curtailing of the rights of the accused. A 1996 constitutional amendment limits the right to release on bail when the prosecutor argues that the accused in question has been convicted in the past for a serious crime, or that given the accused's past behaviour his or her release will constitute a danger for the society. A 1998 amendment also modified the requirements for an arrest warrant to be served by the judge upon request of the prosecutor. In the past the prosecutor had to show that the crime has actually been committed and that it can probably be attributed to a given suspect. Following the amendment the prosecutor only needs to show that the crime has probably been committed and can probably be attributed to the person for whom the arrest warrant is requested.

The reforms described above have been criticised for their alleged negative impact upon the respect for citizen's human rights. Human rights organisations have said that this would enhance the already existing and widespread practice of tampering documents and fabrication

of evidence, as well as the practice of torture and coercion to obtain confessions from the suspect or accused.

Cases

Digna Ochoa (lawyer): Ms. Ochoa is the head of the legal division of the Miguel Agustín Pro Juárez Centre for Human Rights (PRODH) and as such she has been the subject of a series of threats and attacks throughout 1999 by individuals reportedly linked with governmental agencies. The first attack occurred on 9 August 1999 when she was abducted for several hours, beaten up and documents related to her work were stolen by unidentified assailants. Several consecutive attacks occurred during September and October, including bomb threats to her offices at PRODH. The most serious attack was carried out against Ms. Ochoa in her Mexico City home on 28 October 1999. During nine hours she was blindfolded, tied up, threatened, interrogated and pressured to sign papers and was ultimately rendered unconscious by at least two unidentified individuals. She was persistently questioned about her professional activities as a lawyer in southern Mexico and there is strong evidence that the attacks constitute a retaliation for her work as a human rights lawyer. In November the Inter-American Court of Human Rights issued precautionary measures in favour of Ms. Ochoa asking the government to provide her with the necessary security protection.

The harassment of Ms. Ochoa is closely related to her work in PRODH, a non-governmental organisation (NGO) that litigates, domestically and internationally, cases of torture, execution and arbitrary detention. PRODH started to be the target of threats and attacks in 1995 when its lawyers took up a number of cases of individuals allegedly involved with the insurgency in Chiapas and whose due process rights had been violated. The periodic threats include death and bomb threats, monitoring and break-ins in PRODH's offices by anonymous individuals which continue to occur despite governmental assurances to investigate them and pledges to provide PRODH's premises and staff with further security.

Israel Ochoa Lara (lawyer): Mr. Ochoa works in the southern state of Oaxaca, mainly defending peasants who are unjustifiably accused or whose due process rights are violated. In August 1998 he was accused of having links with the Popular Revolutionary Army because he was defending individuals allegedly involved in the activities of this rebel group. On 25 June 1999 an arrest warrant was issued against him, this time in connection with criminal charges filed against him in 1997 pursuant to Article 232 of the Federal Penal Code that prohibits lawyers from sponsoring two parties with conflicting interests at the same time. In the case at issue one of Mr. Ochoa's clients had involved, in his confession to the authorities, another client of Mr. Ochoa in some criminal activity. Mr. Ochoa immediately withdrew from representing the latter client.

Mr. Ochoa challenged the arrest warrant and a court suspended it temporarily, but the charges were not dropped. In September 1999 the Lawyers Committee for Human Rights issued an alert stating that the criminal proceedings against Mr. Ochoa had been terminated after a judge declared them invalid and the Attorney General's office did not appeal the judge's decision.

Miguel Ángel de los Santos Cruz (lawyer): Mr. Santos Cruz works for the Mexican Commission for Human Rights and has been litigating cases for indigenous people in the Chiapas state. In March 1999 the state government issued a public communiqué in which Mr. Santos Cruz is mentioned as one of the instigators of a confrontation between two political

factions in the municipality of Nicolas Ruiz which led to the expulsion of PRI(the ruling party) supporters from the village. The government communiqué also stated that an arrest warrant had been served against Mr. Santos Cruz. Following this, and taking the announcement of an arrest warrant as a threat against his personal freedom and integrity, Mr. Santos Cruz lodged an amparo petition which was granted by the judicial authorities.