

Addendum to
**“Recalling the
Rule of Law”**

2010 Report of BHRC
Delegation to Mexico 2009



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

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Introduction

Between 26th November and 4th December 2009, a high-level delegation facilitated and led by the Bar Human Rights Committee (BHRC) visited the Mexican states of Guerrero and Oaxaca to carry out an independent and impartial investigation into the rule of law with a particular focus on the situation relating to the protection of human rights defenders and lawyers who work to protect the civil rights of indigenous people and other minority groups, pre-trial and pre-charge detention, and military jurisdiction.

Members of the delegation included representatives of the Bar Council, the Law Society, Avocats Sans Frontières, as well as lawyers representing Canada, Germany and the USA. The BHRC hoped that the delegation would also demonstrate international support and encouragement toward members of their own profession in Guerrero and Oaxaca.

Meetings were held with the Federal Ministry of Interior, the Federal Attorney-General's Office, the Supreme Court, the National Commission for Human Rights, and state and municipal officials in Guerrero and Oaxaca. The delegation also met with the Office of the UN High Commissioner for Human Rights, the British Embassy, and local lawyers and human rights defenders in Mexico City, Guerrero and Oaxaca. While Mexico faces considerable challenges, including very serious problems with organised crime, insecurity, extensive poverty and social inequality, members of the delegation were encouraged by the positive commitments of the Mexican Republic to implement human rights policies. However, the delegation also found that cultural and institutional obstacles within the justice and public security systems were undermining the government's ability to address human rights violations and impunity.

In July 2010, the BHRC launched the report 'Recalling the Rule of Law: Report of the Lawyers' Delegation to Mexico' and the findings of the 2009 delegation at the House of Lords. The event was chaired by Lord Brennan, Bar representative on the Council of the International Bar Association. The findings of the report were presented by BHRC Executive Committee members and delegation members, Ajanta Kaza and Adam Hiddleston. Also on the panel were Santiago Aguirre, lawyer at the Tlachinollan Human Rights Centre, who was among the people interviewed by the delegation as part of their research, who provided

insight into his personal experience of representing victims of human rights violations in Guerrero, and Elisa Maracani of Peace Brigades International, who gave an update on the issues in Mexico in protecting human rights defenders. The report highlighted that despite positive commitments made by Mexico in the international arena, within Mexico human rights abuses by Mexican government authorities continue to take place and many are not adequately addressed.

Following the launch, the report was translated into Spanish and presented during a follow-up BHRC delegation to Mexico, which took place in September 2011. The purpose of the second delegation was to audit and monitor developments in the protection of human rights defenders and the rule of law in Guerrero and Oaxaca since the 2010 report findings and recommendations. The delegation was made up of Executive Committee members Ajanta Kaza and Adam Hiddleston, together with John Traversi and Joanne Cecil, members of the Bar of England and Wales. The delegation met with a significant number of federal and state-level authorities, including the Ministry of Interior, Foreign Ministry, Attorney General's Office, the National Commission of Human Rights and the Department of Public Security as well as numerous civil society organisations and human rights defenders.

This addendum report is the result of that "follow-up" BHRC delegation.

Reasons beyond the control of the delegation meant that it was a short visit (1 week) and that their activities were hampered by time and fiscal considerations. A successful day of training in oral trial advocacy was held in Mexico DF, which necessarily curtailed the time available for other meetings. These meetings were, of necessity, organised in rapid succession and to a tight schedule. Although transportation and logistical difficulties were factored into the planning, the schedules could not always be maintained.

After the initial day of oral trial training, and meetings with NGOs involved in various aspects of the human rights debate and actions in Mexico, including RedTDT, Centro ProDH, Catolicas por el Derecho de Decidir, IMDHD, I(dh) eas and litigaOLE, CMDPDH and PBI, the delegates divided, two going on to Oaxaca and two to Chilpancingo in Guerrero, to pursue updates on the findings of the previous delegation.

On the return of the two members who visited Chilpancingo to Mexico DF, a number of interviews were undertaken with officials on a Federal level, and subsequently the entire delegation had a meeting with the British Ambassador and representatives of a variety of legations to Mexico to discuss their visit, findings and conclusions.

Finally, and not least importantly, the delegation met with a large number of victims of human rights abuses, including the relatives of the victims of murder, rape, forced disappearance, arbitrary and unjustified detention. It was significant that these cases did not only concern members of the population at large, but that there was an important presence of those representing members of the security forces, police etc, who had equally been the victims of injustice.

The purpose of this report is to set out the inquiries undertaken by the delegation and the results of interviews held with officials at a Federal level and assess what conclusions can be drawn from these. It is right to say that following the delegation's visit in September, there have been developments in a number of areas and an effort will be made to incorporate those to this report; however it should be noted that these are outside of the scope of the delegation's remit.

London, October 2012

Acronyms

| | |
|----------|---|
| BARCA-DH | Bartolomé Carrasco Briseño Regional Centre for Human Rights |
| CCTI | Collective against Torture and Impunity |
| CNDH | Comision Nacional de Derechos Humanos |
| CEDHAPI | Centro de Derechos Humanos y Asesoría a Pueblos Indígenas (Centre for Human Rights and Advice to Indigenous Peoples) |
| RED-GRO | Guerrero Network of Human Rights Organisations |
| PGR | Federal Attorney General |
| HRDs | Human Rights Defenders |
| IACtHR | Inter-American Court on Human Rights |
| IAHRC | Inter-American Human Rights Commission |
| PGJM | Military Attorney General's Office |
| NGO | Non-governmental organization |
| OPIM | Organisation for the Indigenous Me'Phaa |
| OFPM | Organisation for the Future of the Mixteco People |
| OPIM | Organisation for the Indigenous Me'Phaa |
| PBI | Peace Brigades International |
| PGR | Attorney General's Office |
| PRI | Institutional Revolutionary Party |
| SEGOB | Secretaría de Gobierno |
| SSP | Secretaría de Seguridad Pública (Ministry of Public Security) |
| UPDDH | Unit for the Promotion and Defence of Human Rights of the Ministry of the Interior |

I. Chilpancingo – Guerrero

Two members of the delegation (Ajanta Kaza and John Traversi) travelled to Chilpancingo on 20th September 2011. The evening of their arrival they attended a meeting at the offices of RED-GRO (Guerrero Network of Human Rights Organisations). Representatives of the following organisations were present:

- i) **Human Rights Centre for the Mountain Tlachinollan** (Tlachinollan) whose mission is to promote and defend the rights of indigenous peoples (Na Savi, Me'phaa, Naua, Nn'anncue) and Mestizo populations of the mountain and small coast areas of the state of Guerrero, both nationally and internationally.
- ii) **Mocipol**, Civil Monitor of the Police and Security Forces of the Mountain, whose mission is to monitor the public security institutions in the mountain region to observe four basic principles; priority attention to citizens, respect for the law, respect for human rights and transparency and accountability.
- iii) **Collective against Torture and Impunity** (CCTI) a non profit civil society organisation contributing to the establishment of a rule of law which is free from torture and ill-treatment in Mexico, by reporting on instances of torture and attending to victims of torture and acting on behalf of victims and their families.
- iv) **Organisation for the Indigenous Me'Phaa** (OPIM) and **Organisation for the future of the Mixteco People** (OFPM) organisations which promote and defend the rights of these populations in a state which has one of the highest rates of marginalisation in Mexico and some of the lowest indicators of development. OPIM has campaigned for justice in high profile cases such as the rape by soldiers of **Ines Fernandez Ortega** and **Valentina Rosendo Cantu**. Their activities have resulted in their subjection to harassment and intimidation, including violence and in one instance murder, and many activists have been placed under surveillance.
- v) **RED-GRO** (see above).

The delegation were provided with a helpful update by Tlachinollan, setting out the position, as recognised by them, in various areas covered by the 2009 delegation, including a number of iconic cases studied by that delegation.

Tlachinollan stressed the problems faced by the indigenous population in Guerrero, in particular the vulnerable situation of indigenous human rights in the context of land and political conflict and in the justice system. They emphasised the discrimination experienced by this population as reflected by their low status on the human and social development indices, extreme poverty and the wide gap in income and wealth distribution between indigenous and non indigenous populations, lack of basic social services, education, low levels of infrastructure development in their regard and violence faced by them through processes before the justice system. **Tlachinollan** reiterated that in Guerrero, as in other parts of the Republic, people and organisations engaged in the promotion and defence of human rights face a dangerous situation where threats and other harassment from state and non-state actors are a common experience, and Human Rights Defenders (HRDs) are rendered more vulnerable as a consequence of the activities of organised criminals and the militarization of efforts made by the state to contain them.

I. I. Status of Recommendations

Tlachinollan brought the 2011 delegation up to date with progress, or otherwise, in cases presented to the 2009 delegation, which were the subject of recommendations made by that delegation. These updates reflect the situation at September 2011 and some developments have occurred since then.

I) Valentina Rosendo Cantu and Ines Fernandez Ortega.

Recommendation: That the IACtHR rulings¹ of 1st October 2010 be fully implemented as soon as reasonably possible and that the perpetrators be brought to justice.

Status as of September 2011: Failure to be accomplished.

Although working groups were established with a view to complying with the judgments on a Federal level, the PGR (Attorney General's Office) refused to request investigations into both cases which were then still under the wing of

1 IACtHR. Case of *Fernandez Ortega et al v. Mexico*, judgment of August 30th, 2010, series C no. 215 par.79 and Case of *Rosendo Cantu et al v. Mexico*, similar citation but par.71

the Military Attorney General's Office (PGJM). On 28th July 2011, **Valentina** and **Ines** formally requested the transfer of their cases from the military jurisdiction to the civilian one, in response to the judgment of the IACTHR.

On 12th August 2011, PGJM notified that both investigations had been sent to the Attorney General's Office (PGR). Almost a year after the IACTHR judgments, there was no information emanating from the Ministry of the Interior as to concrete achievement in meeting the reparations ordered by IACTHR. The delegation was told that no information was forthcoming as to who was responsible for the investigation.

2) Bonfilio Rubio Villegas

Recommendation: Assure that the investigation of the death of Bonfilio be kept within the criminal justice system and not be granted military jurisdiction. Carry out a prompt effective and impartial investigation and bring the perpetrators to justice.

Status as of September 2011: Failure to be accomplished.

An *amparo* application challenging the jurisdiction of the military courts in this case had not yet concluded and it was thought it would be the first to reach the Mexican Supreme Court, in order to decide on the limits to the use of military justice. (See *post, conclusions.*)

3) Raul Hernandez Abundio

Recommendation: Unconditional release and the dropping of all charges.

Status as of September 2011: on August 10th 2010 the 1st Instance Court in Ayutla declared absolute freedom for the human rights defender RHA, declaring him not guilty, after he had spent two years in detention.

4) Raul Lucas Lucia and Manuel Ponce Rojas

Recommendation: Carry out a prompt, effective and impartial investigation into the deaths of Raul and Manuel and bring the perpetrators to justice.

Carry out a prompt effective and impartial investigation into the failure of state officials to open an investigation into the forced disappearance when Raul's wife tried to file a complaint with the Guerrero State Attorney's Office (PGJE).

Status as of September 2011: Failure to be accomplished.

The National Commission for Human Rights, Mexico's official human rights organ, had initiated a complaint against the Federal and state authorities for violations of human rights in regard to the disappearance and killing of the two men. The commission took on the case because of its national importance and on 29th December 2011 issued a recommendation that actors from the Guerrero State Attorney General's Office had violated the victims' and their families' rights to justice and security in their search for justice. The Commission urged the Governor of the State of Guerrero to exhaust all investigation lines possible and determine the legal and administrative responsibilities of all those who may be accountable.

5) Lorenzo Fernandez Ortega, a member of OPIM (Organisation for the Indigenous Me'Phaa) and brother of Ines Fernandez Ortega

Recommendation: Carry out a prompt, effective and impartial investigation into the death of Lorenzo on 9th February 2009 and bring the perpetrators to justice.

Status as of September 2010: Failure to be accomplished.

By March 2010, the only actions taken in investigating this death were the preliminary investigations made at the time the inquiry was opened. The delegation heard complaints that the Guerrero State Attorney General's Office (PGJE) took a negative attitude towards the contributions that Lorenzo's family and representatives sought to make. The crime was classified as the result of a fight between inebriated individuals. The only person charged with the crime claimed he had been the victim of torture, and was, in any event, released by the order of the Criminal Chamber of the Guerrero Superior Court. Another suspect remains at large.

1.2. Other Cases Brought to the Attention of the Delegation

Other cases were touched upon. The prevailing mood among those involved in the discussion was that justice was distant and slow in coming in most, if not all cases. No confidence was expressed in the authorities at state level and little in those at a Federal level. A common view was that, in the pursuit of justice, it would be best to await judgments of the IACtHR, and to pursue cases armed with the support of decisions of that Court.

The delegation was told that, as regards human rights in Guerrero, matters had not moved since 2009, save in a retrograde way, because the situation had deteriorated. There were many outstanding cases of abuses by the police and the military. HRDs were disincentivised from pursuing cases and carrying out their vocation because of threats, harassment, violence and unsubstantiated charges being made against them, which were then left in abeyance and used as a “sword of Damocles” to dissuade them from taking action. Those present expressed a disquiet that the work of HRDs was being criminalised and that the state government and the military appeared to work together to thwart their work. Criminal gangs, by their very nature, posed a serious threat and interference to the work being done by HRDs with the populations and migrants, quite apart from the jeopardy they posed for both the populations and the HRDs themselves.

It was reported that people with grievances were reluctant to take action because they feared the consequences of so doing, i.e. violence or worse. HRDs were feeling compelled to advise them that they should not make complaints, in the current atmosphere, because of the inherent risks of intimidation and reprisal.

In April 2009, the IACtHR granted provisional measures to protect the life and physical integrity of **Obtilia Eugenio Manuel**, president of OPIM, and her family, in the face of threats she had received, arising from her work with the Me’phaa population. Similar measures were granted to other members of OPIM, **Ines Fernandez Ortega** and her family, members of **Tlachinollan** and the next of kin of **Raul Lucas Lucia** and **Manuel Ponce Rosas**.

Following the granting of these measures, the delegation was told that threats and aggressions continued, including threats made directly, by telephone and in writing, that there have been arbitrary detentions, irregular arrest warrants, unwarranted surveillance of the beneficiaries of the measures and their homes and work-places by both state and non-state actors, harassment, illegal entry into homes by members of the armed forces, physical assaults and attacks with weapons and the killing of members of the families of beneficiaries of these measures. There has been a failure to deliver on the logistics of such measures, in coordination and implementation.

At a Federal level, the Unit for the Promotion and Defence of Human Rights (UPDDH) of the Ministry of the Interior is the government entity responsible for the implementation and coordination of precautionary and provisional measures granted by international entities. However, the reported experience of **Tlachinollan** was that requests to UPDDH have not met with a satisfactory response. The delegation was told that these main issues limit the efficiency of UPDDH: lack of resources for infrastructure measures; the wide discretion left to Federal entities on these issues, justified on the basis that the Republic is a federation of states, and lastly, the slow response to situations of urgency. This lack of coordination has made the process of access to such measures very difficult and even inoperable.

In Guerrero, the delegation was told, at a state level, there are no specific measures, programmes or governmental agencies set up, adopted or planned to guarantee the safety and protection of human rights defenders, even though there are more of them than in other states.

On 7th July 2011, a Presidential Decree established guidelines for a National Protection Mechanism for HRDs, however, no such mechanism has been forthcoming and there was a lack of answers on improvements in the provision of such measures or, indeed on the coordination of such improvements. To date the financing of any such mechanism remains quite uncertain.

The participants reported a seemingly unchanged position with regards to military justice in cases where military personnel commit violations of human rights and offences against the civilian population or components of it. Cases where military personnel commit offences against civilians continued to be tried in military courts, as the military considered that to be the proper jurisdiction

for such cases. The view was forcibly expressed to the delegation that justice for the civilian population in those cases was remote, that military tribunals protected members of the armed forces and that military investigators were not equipped, in any event, to carry out proper, effective and efficient investigations concerning the civilian population and in any event the military jurisdiction impeded the proper and effective investigation of such complaints by impartial outside agencies. Where complaints were made against the military (480 cases of violations of human rights have been identified) no progress has been made.

1.3. Further Meetings held by the Delegation

MEETING WITH THE *SUB PROCURADOR DE CONTROL REGIONAL Y PROCEDIMIENTOS PENALES* (DEPUTY ATTORNEY GENERAL FOR REGIONAL CONTROL AND CRIMINAL PROCEEDINGS)²

The delegation visited the PGJE, in Chilpancingo, and was received by the Deputy Attorney General. He was keen to establish what the delegation wanted to ask him from the outset. He was told what the purpose of the delegation's visit was and he was provided with a copy of the 2009 delegation's report, in Spanish. The delegation identified the topics it wanted to cover, including the cases of **Valentina** and **Ines** and progress on that case, following the judgment of IACtHR, the protection of HRDs (including the case of **Lorenzo Fernandez Ortega**) and the relationship between state prosecutors and military tribunals in cases of offences committed by members of the armed forces against members of the civilian population.

In relation to **Lorenzo's** case, the delegation raised the question of his killing with the Deputy Attorney General, for his comments on that case, since the acquittal of two people tried and previously convicted of his murder, in particular as to what further enquiries were under way to ascertain who had been responsible for the death of this HRD. He said that his department had an obligation to continue the investigation into this death, that it was a cold case situation and the investigation would have to examine why the court took the view that witnesses at the previous trial were unreliable. Beyond that he had no information which he was able to give the delegation.

2 Licenciado Alejandro Hernandez Paz y Puente

He recognised the judgment of the IACtHR in the cases of **Valentina** and **Ines** and spoke of it having been taken over by the Federal Attorney General (PGR) following remittal by the military authorities.

He recognised the judgments of IACtHR in respect of protective measures for HRDs. He said that such protections were offered in the state of Guerrero and recognised that they often failed, citing technical problems and faulty use by the recipients, e.g. with telephony, security measures et al. He told the delegation that the Attorney General of Guerrero was very aware of the IACtHR judgments and had every intention of implementing them at state level. He had attended Mexico DF to discuss these matters and further gone to Costa Rica to inform the IACtHR of the stance of the Guerrero State government in respect of IACtHR judgments and the respecting and protection of human rights in the state. He spoke particularly about the indigenous population and of initiatives proposed for programs to protect such populations in remote, rural and mountain areas, citing the particular vulnerabilities of such populations to organised crime. He conceded that there was a lack of coordination, but gave the reason as being the fact that the indigenous population often did not speak Spanish and that it was the responsibility of his office to see that they understood their rights, but that because they did not know their rights, they were easily taken advantage of. The main problems were lack of communication and ignorance, coupled with the centennial way in which some of these populations still lived. He said that the Government of Guerrero was concerned with establishing means of communication so that even the furthest community could have contact with the state, such as satellite telephony etc.

He praised the efforts of HRDs, citing them as conduits for information to the indigenous peoples and conversely of complaints by them to government and spoke of the influence and support provided by such people. He also spoke of efforts to provide a "mobile public ministry office" to facilitate contact between the authorities and remote populations.

He was asked about the relationship between civil and military prosecuting authorities where civilians were involved. He said that the Mexican Constitution provides that the army is only allowed to take part in civil life in cases of natural disasters, war etc. and at the Federal level the armed forces are there to preserve the security of society. He said that because of the current situation in Mexico, the military have had to take part in the preservation of security, beyond the

remit of state government and were embedded in programs with other law enforcers to prevent, discover and investigate crime, specifically drug cultivation and trafficking. He stated that the armed forces, as with other agencies, had an obligation to report to the civilian authorities and that thus all agencies, civilian and military, should be aware of the situation.

In respect of the appropriate forum for trying a case where a civilian makes a complaint against military personnel, he said that this was a question of the competent jurisdiction and that if military personnel were involved, the case would be tried by a military court. He recognised the debate on this point, but seemed to be saying that these considerations should be decided on a case by case basis.

It was not possible to arrange any further meeting with other actors in Guerrero, beyond the launch of the Spanish version of the 2010 report at the offices of Red-Gro.

This was attended by the press and by representatives of NGOs and HRDs. The prevailing tendency of questions asked and information imparted suggested a continuing dissatisfaction with the situation in Guerrero and in the Republic at large. A major preoccupation was the immunity from effective justice that military justice provided to those military personnel involved in crimes and human rights abuses against the civilian and indigenous populations and that there was little to choose between the armed forces and their opponents in the “war against drugs”. Nothing had changed since 2009 was the leitmotif of what the delegation was told. Human rights defenders were as vulnerable as ever to the actions of non-state and state actors and, if anything, their effectiveness and security was more, rather than less undermined than it had been, for the reasons cited above.

2. Oaxaca

Two members of the delegation (Adam Hiddleston and Joanne Cecil) travelled to Oaxaca City on 19th September 2011. The visit lasted until 21st September and whilst in Oaxaca, the members were helpfully assisted by representatives of PBI from its offices in the city. They arranged meetings with various organizations and individuals connected with human rights issues, members of the State government and of Federal institutions based in Oaxaca State.

2.1. Status of Recommendations

1) Marcelino Coache

Recommendation: **Prompt, effective and impartial investigation of claims of torture and harassment at the hands of state police officials. Implementation of precautionary measures issued in respect of Marcelino and his family.**

Status as of September 2011: **It would appear that, at the time of the latest visit to Oaxaca, no attempt had been made to comply with the terms of that recommendation.**

At the presentation of the recent publication by CODIGODH of *Romper El Miedo – Tortura y Resistencia*, which related to the case of Marcelino Coache, he described how he had been arrested and imprisoned in December 2006. Whilst in custody he had been tortured both physically and psychologically. His torturers sought an admission that subversive groups were providing money to the groups that he was involved with. Following his release he was harassed and then arrested again in March 2009. Again he was tortured whilst in custody. Having been released he was again subjected to harassment and was attacked and stabbed in 2010. Finally, in 2011, whilst partaking in a public protest he was attacked by a policeman and struck on the head. As a result he was hospitalized and operated on as a result of injury to his brain.

Files on this case have been presented to both the state and Federal authorities starting in 2009. Nevertheless there has been no progress with the investigation into the allegations made on Marcelino Coache's behalf. The feeling was that

both bodies had '*procrastinated and demonstrated a lack of interest*'. Both maintain, despite the evidence provided, that Mr Coache had not been tortured. Mr Coache has continued to be subjected to harassment.

2) Juan Manuel Martínez Moreno

Recommendation: **Provide compensation to Juan Manuel Martínez following his 490 days held in detention and carry out a prompt, effective and impartial investigation into the death of Brad Will and bring the perpetrators to justice.**

Mr Moreno had been accused of the murder of the American journalist Brad Will during a demonstration in Oaxaca City in 2006. He spent 490 days in custody despite a clear lack of evidence and was eventually released as a result.

Mr Moreno has been the subject of harassment since his release. In February 2010, the same month that the Federal Court upheld the lower court's decision to release him due to the lack of evidence, the police searched his home. In June 2011 he and his children were chased by a van in Oaxaca City.

Status as of September 2011: **The authorities have not brought the killers of Brad Will to justice.**

During the course of the meeting other representatives gave, sometimes harrowing accounts of harassment and violence meted out against those involved in human rights and, in particular, those connected with organizations that champion the rights of indigenous peoples and migrants. These involved extra-judicial executions, arbitrary arrests, sexual abuse, forced disappearances and harassment. The clear perception of those attending was that the state either played a part in some of these activities or turned a blind eye towards them and failed to properly investigate them.

2.2. Other Cases Brought to the Attention of the Delegation

BARCA-DH referred the members to the *Loxicha Case*. At the time of the meeting, of the 12 arrested in 1996, only 4 had been released (2009). The case was proceeding towards a possible resolution through the possible application

of the Amnesty Law. However, those imprisoned had clearly suffered a deprivation of their liberty for some considerable time in circumstances where the evidence upon which they were convicted was highly unreliable, including, for example, confessions obtained through torture and written in Spanish rather than Zapotec.

The members were told of the forced disappearance of 10 individuals in Matamoros. The members of an eco-tourism co-op had travelled there arriving in July 2010. Text messages and bank records confirmed their arrival, but from noon the same day all communication ceased. The community tried, without success, to persuade the authorities to find these individuals, even resorting to hunger strike in July 2011. However the case has been marred by a lack of genuine effort on the part of the authorities with false leads promoting false hope.

On behalf of CEDHAPI, the members were told that they had 30 cases relating mostly to attacks upon and the torture of members of the *Chatino* community. In relation to some 12 open reports, there have been no substantial advances.

In particular cases, there was some evidence that the state authorities had begun to investigate some allegations and this was seen as a positive sign. Nevertheless, things had moved very slowly and in 8 months there had been no substantial results. The perpetrators were still at large and no conclusions had been reached in respect of the allegations of torture.

Provisional measures had been put in place – for example, in one case a cell phone had been provided so that communication could be made with the police in an emergency and the Federal Police were patrolling and this had diminished cases of harassment. However, no CCTV had been provided.

CEDHAPI remained very concerned about the sense of impunity resulting from the failure to punish those responsible for human rights abuses. Since the last delegation visited there had been many new cases, many resulting from the war on drugs and the subsequent militarization. In many cases indigenous peoples are singled out and detained by reason of their failure to speak Spanish.

One such victim was Roman Garcia. Garcia had been hitchhiking when the lorry he was a passenger on was stopped by the military. He did not speak Spanish

and the soldiers became angry with him. When marijuana was found on the truck, he was blamed, detained and subsequently tortured. His head was held under water and he suffered a punctured lung. This led to a complaint by the National Commission for Human Rights (NCHR) against the State Government and the military. Garcia was released, but those responsible have never been brought to book.

CEDHAPI gave very helpful information as to the implementation of the new oral, adversarial legal procedure. Because of budgetary concerns the implementation process had ceased. Training in the new system was rare and in a lot of cases, those who had been in charge of the old system were now in charge of the new one. The members were told that in some cases, especially rape and sexual abuse, the public prosecutors sought to resolve them by way of a financial payment to the victim.

2.3 Other Developments

This concerning situation has to be looked at against a background of continuing change in Oaxaca State, which provided the delegation with a degree of hope.

In December 2010 Governor Gabino Cue Monteagudo assumed office. He was the first governor for 80 years not to come from the PRI. The Governor kindly agreed to meet the members of the delegation.

The members met with the Governor and his advisor on human rights policy at the Governors Office in Oaxaca City. Governor Cue and his advisor were very keen to emphasize the new administration's determination to address all aspects of human rights abuse. The members were assured that old cases, inherited from the previous administration, were being looked at afresh and that the allegations made in them would be properly investigated.

Whilst, Governor Cue made the point that the take over of power by his administration was still very recent and that there were budgetary constraints that could not be ignored, he appeared to display a genuine interest in the promotion of human rights and a wish to address the crimes of the past. It is to be hoped that this will prove to be the case and that it may contribute to a greater degree of trust and dialogue with all in civil society, such as those individuals and organizations who had taken the time and gone to some

considerable effort to meet with and discuss their concerns with the members of the delegation.

Importantly, Oaxaca is one of the States pioneering the change from an inquisitorial system to an adversarial 'oral trial' system. The Governor was particularly keen to embrace training and capacity building in this regard.

The overwhelming conclusion was that, since the last delegation had visited Oaxaca, serious violence against and intimidation of civilians and human rights defenders had continued. There was some evidence of the State authorities beginning to implement a genuine process of investigation. This, however, was very much in its infancy and the experience of those the members heard from was of a slow process marked by a sense of indifference and a lack of enthusiasm by those who were engaged in it.

3. Mexico DF

On the return to the capital of the part of the delegation that had visited Chilpancingo, a number of meetings were held with officials in various government departments and organisations. The remaining two members of the delegation joined the others upon their return from Oaxaca. Those interviewed included a number of high ranking officials and political figures and were conducted with the aim of investigating action taken on the complaints that had been voiced to the original delegation and to the instant one, in various areas affecting human rights and the rule of law and to establish what progress had been made in dealing with these complaints.

There was a meeting with the **Director of the Unit³ for the Promotion of Human Rights at SEGOB (Secretaria de Gobierno)**. She spoke about the process of constitutional reform and said that many states had embraced the reforms, although in some cases this had led to a reactionary “counter reform” taking place at state level. She described how, although the Federal Government could not force state governments to act on the reforms, it could work with them in order to harmonise the approach and the situation across the Republic. She expressed the view that the reforms would enable, in time, a broader legal foundation on which work on human rights could rest. She saw the role of the Federal Government as an overseeing one, as opposed to an enforcement one and that it would accompany the states on this journey and cooperate with them, but did not have powers of coercion in this regard. The question of human rights was the backdrop to this discussion. SEGOB had been informed by NGOs of the problems identified in Guerrero and Oaxaca relating to human rights initiatives for the civilian populations in those states, and specifically as they concerned HRDs working on the ground with the populations.

The delegation asked the director about the problems encountered by these populations as a result of the use of the armed forces in the “war against drugs” and further problems posed to these sometimes remote and vulnerable communities by the aggressive actions of local “caciques”. The director was asked what initiatives had been taken by the Federal Government to investigate and bring a solution to these types of cases and provide protection for the

3 Ma. Omeheira Lopez Reina

population and to HRDs, in particular those engaged as human rights advocates, working with populations on the ground.

The Director said that on the 7th July 2011, the President of the Republic had issued a Decree by which SEGOB and other government agencies were instructed to work on mechanisms for the protection of HRDs. Invitations to participate had been issued to NGOs and meetings had been held in the areas concerned. These organisations had said that they could not travel to Mexico DF because of the risks involved, but wanted to be involved in the dialogue, so further meetings were to be held at a local level to try to meet the needs of the NGOs concerned. Precautionary measures would be adopted where necessary.

The Director went on to speak about precautionary measures more generally. She recognised the risks faced by populations and specifically HRDs and advocates and those they represented. She said that SEGOB had the means to produce a series of guidelines for the application of precautionary measures and told the delegation that various organisations were to be invited to Mexico DF to discuss these arrangements. However, there was no budget allocated for the purpose, and although SEGOB had been given money to protect journalists, the same was not the case with HRDs. Efforts had been made to share this budget, but that would require a Presidential Decree. The Director stated that the Federal Congress would be asked for money to establish a proper framework of protective measures for HRDs, who were those who faced the gravest risk. She also spoke about the reported inadequacies of such measures, for example that technology provided, such as satellite telephony, often did not work or was provided too late. However, the technological aspects of this were not SEGOB's responsibility, telephones had been delivered to Guerrero but a series of managerial deficiencies had arisen. Central Government was committed to try to solve these problems and improve the situation by replacing handsets and setting up a contract with a company to provide the service more expeditiously. However problems with connectivity were outside the capacities of SEGOB. She acknowledged the problems, in particular the fact that HRDs sought protection from the Federal government rather than from the state (in the case of Guerrero) because of the lack of confidence in state bodies for these purposes.

The Director was asked about the interference with the work of HRDs by elements of state government, their fear of harassment by way of unjustified

arrest and accusations of complicity with criminal elements. She said that the Federal Government was working closely with judges throughout the country to protect HRDs and to protect the judges themselves.

The Director spoke of the conflict between military and civil justice and how there was political movement to address these imbalances although there was no time in the (then) current legislative cycle to put through any reform. She recognised that the process of reform of the military jurisdiction had not proved satisfactory for all and stated that more pressure would be placed on Congress. She told the delegation that decisions of the IACtHR, for example in the case of Radilla, would help in the resolution of the problem.

With regard to the particular problems faced by journalists, the Director spoke of a committee set up to evaluate human rights abuses of journalists and of the availability of measures set up and financed to protect them. She said that the budget provided by the Federal Congress in respect of journalists was not exhausted and that she hoped the surplus could be allocated to the protection of HRDs, but this could not be done without the approval of the Federal Congress.

The delegation also met the **Executive Secretary of the Comision Nacional de Derechos Humanos (CNDH) (National Human Rights Commission)**,⁴ Mexico's official human rights organ, and with the director of International NGOs at that body⁵ as well as with various other staff members of that organisation.

The Executive Secretary told the delegation that Mexico was a complex country with 140 million inhabitants of whom 52% lived in poverty, a situation which had not improved. There are wide inequalities in income distribution, there is unemployment and problems with education. The country faces serious problems, the main ones being security, the fight against crime and the many victims that result from it.

Further problems are caused by migration to the USA from Mexico and other Latin American countries. Non-Mexican migrants have to cross Mexican territory in their attempt to reach the USA and these attempts fail because of

4 Lic. Gerardo Gil Valdivia

5 Ariadne Garcia Hernandez

the closed border, leaving them on Mexican soil, where they become prey to organised crime. Difficulties also arose in the provision of health services for the urban populations and social services as well as other public services in general.

The CNDH receives complaints and publishes recommendations and this helps in the fight against the taking of bad actions by the authorities, in 4 main areas:

- 1) Violations of human rights.
- 2) Situations where public policy has to be corrected.
- 3) Action taken in the Supreme Court in relation to actions which are incompatible with the Constitution.
- 4) The recommendation of future legislation.

The Executive Secretary referred to the June 10th amendment to the Constitution, whereby an authority, which does not comply with the Constitution, can be summoned by the Federal Congress to explain its failure.

He went on to say that the international standards of human rights were the accepted norm in Mexico and that the interpretation of new laws had to have regard to the many treaties adhered to by the Federal State and if a conflict of laws appeared then the law that provides for the better solution must prevail.

He stated that Mexico stood at a turning point and that few people seemed to fully understand this. It represented a new epoch for the Federal Supreme Court and different systems and considerations now to be applied in law. There were, he said, obstacles to reform, citing the armed forces and the Federal police in this context. He stated that the CNDH was very critical of military justice and that cases involving military personnel and the civilian population should be tried in a civil court and not a military one.

He spoke of the protection of HRDs, of migrants and their defenders and of measures taken to protect them and how, now, CNDH had representation in all migrant hostels. He spoke, in particular, of the protective measures applied to Padre Alejandro (e.g. telephony, patrols, CCTV). These were granted by the IACHR on April 23rd, 2010. It should be noted that on 16th May 2012, Padre Alejandro left Mexico owing to threats to his life. In the preceding two months

he had received six death threats because of his work in defense of the human rights of migrants in Mexico. On 22nd May 2012, the IACHR condemned the threats to his life stating that it considers “it a matter of extreme gravity that the Mexican State has not taken effective protection measures to prevent Father Solalinde from being forced to leave the country, especially in view of the precautionary measures it granted”.

The Executive Secretary told the delegation of the promotion by CNDH of courses in human rights for Federal and local judges. The delegation was provided with literature which underlined the Commission’s commitment to rolling out respect for human rights at Federal, state and local level, including the protection of human rights defenders, and the education of agents of state and Federal security in such matters, and to designing and implementing a national scheme to achieve those ends.

A further meeting took place with the Director General of the **Dirección General de Derechos Humanos y Democracia at SRE (Ministry of Foreign Relations)**.⁶ This was, unfortunately truncated for by now familiar reasons and the Director General had to go to another appointment soon after the delegation’s arrival. He underlined the importance to the Federal Government of Mexico’s adherence to a multiplicity of treaties and conventions and reiterated the priority given to the implementation of Mexico’s international obligations by the current administration (September 2011). As with others, he cited the specific problem caused by the “war on drugs” and drug-trafficking generally and appeared to recognise that this affected human rights activities at a local level.

A meeting had also been arranged with the **Director General de Derechos Humanos (Director General of Human Rights) of SSP (Secretaría de Seguridad Pública – Ministry of Public Security)**. The meeting started on a somewhat uncomfortable note in that there was an air of defensiveness about the delegation’s interlocutors, which had to be put to rest by assurances that the delegation was not there to criticise, but to listen.

Of the greatest importance for this particular Ministry was the question of the well-being of those in the police forces and other organs of state security. The CNDH was there to deal with other abuses. The delegation was told how, within

6 Min Alejandro Negrin Munoz

that context, measures of protection were provided, and how important this was within the framework of a “war on drugs” where the “enemy” had access to vast wealth generated by its activities and was able to buy whatever they wanted. He spoke of human rights training for the police forces, in particular in relation to the civilian population, describing how things were now seen in the country, which had not been seen before. He told the delegation how the drug trade had “sidelined ambition” in parts of the population, and that people fell in line with it because of the economic incentive to do so. He queried how it would be possible to call a truce with the drug traffickers, and indeed, why it should be done.

He sought to break what he described as “old myths” that the Federal Police had involvement in human rights abuses, citing 15 recommendations by CNDH as against 5600 instances of complaint and that his organisation had never had to intervene in such a case. He gave the delegation an explanation of the “arraigo” system of detention.

A further meeting took place at the **British Embassy, at the kind invitation of HM Ambassador to Mexico**. The delegation discussed its initial findings with her and then went on to meet representatives of other diplomatic missions (Canada, Italy, Ireland, EU) to discuss the situation. It was apparent to all that training was necessary to give constitutional reform full effect.

Finally a meeting was held at the offices of **CMPDH (Comision Mexicana de Defensa y Promocion de Derechos Humanos - Mexican Commission for the Defence and Promotion of Human Rights)** where the delegation met with representatives of the families of people who had suffered human rights abuses and listened to their histories. These cases included **Tlaxcala, Pachuca** and **Nadia Mucino Marquez**, cases which involved very different complaints, but had at their heart the apparent impotence of such complainants to obtain a proper examination of their case, let alone justice.

Conclusions

It is with regret that the delegation concluded from this most recent visit that so many of the findings of the 2009 delegation remain representative of the current situation in these states, owing to an overall lack of progress. The delegation received reports and complaints from a number of NGOs and civil society organisations, as well as from individuals, which echoed those voiced during the previous delegation's visit. Reviewing the issues, which were the focus of the 2010 report, of military justice, impunity, the protection of HRDs and journalists, access to justice seen within and outside the context of the "war on drugs" remained the visceral pre-occupation for those engaged in human rights issues.

Cases where military personnel committed offences involving the civilian population continued to be tried in military courts and investigated by military investigators. The view was forcibly expressed to the delegation that justice for the civilian population in those cases was remote, that the military tribunals protected members of the armed forces and that military investigators were not equipped to carry out proper, effective or efficient investigation of such complaints, which should be carried out by impartial agencies. Where complaints were made against the military (480 cases of human rights violations had been identified) no progress had been made.

Insofar as the protection of HRDs was concerned, **Tlachinollan** reiterated that, in Guerrero, those engaged in the promotion and defence of human rights continued to be routinely at risk of threats and other forms of harassment, including physical assaults and killings. The risk emanated from both state and non-state actors, as a result of the activities of organised criminals and the militarization of efforts made by the state to contain them. Those cases in which provisional and precautionary measures were granted by the IACtHR demonstrated that the grant of such measures was almost wholly ineffective absent a coordinated and unified approach to their implementation by the federal and State authorities, supported by adequate monetary and human resources.

Discordance between expression of intent and evidence of action

The delegation found evidence of incremental yet glacial progress in relation to some of the cases specifically cited in the 2010 report. For example, in the cases of **Valentina Rosendo Cantu** and **Ines Fernandez Ortega**, in August 2011, the Military Attorney-General's office notified that both investigations had been transferred to the civilian Federal Attorney-General's office. However, the delegation was concerned that no progress appeared to have been made in the investigation since that time and it was not clear what progress was anticipated. As such, the delegation was concerned that the lack of adequate progress, over so long a period of time, whether within the military or civilian jurisdictions, indicates that adequate access to justice and respect for the rule of law remain distant objectives for vulnerable individuals and communities. The contrast between aspiration expressed at a Federal, or even State level, for progress in this field and the failure to render timely and effective justice suffocates the germination of realistic hope.

The delegation found that improvements in the human rights situation were so slow to appear that a discordance was created between the expression of willingness on the part of Federal authorities to address the issues raised and the intention to resolve them on the one hand and the reports of the HRDs and NGOs as to the situation on the ground on the other. It was of concern to the delegation that such delay may create insurmountable obstacles to compliance with judgments of the IACtHR.

It was also of concern to the delegation that such progress as has been made in the field of human rights in Mexico often stems from cases taken to the IACtHR by NGOs. There is absolutely no criticism inherent in these observations of such action, which appears to be one of the few courses available in a quest for justice in those cases. In this regard, a further concern of the delegation was the absence of adequate capacity building within the legal profession and the judiciary to deal with human rights questions and, indeed, to deal with the evidential material which gives rise to those questions. Recent constitutional reforms are welcome, but their effect must be reflected in the trial process and the absence of capacity building leads to challenges to evidence not being made when they should be made and human rights considerations not being given

the scrutiny that they demand within that process. The absence of an effective representative body or bodies for lawyers, with responsibility for standards, training and conduct may be one factor accounting for this.

Furthermore, the effective investigation of crime in today's societies requires skills which, according to the evidence received by the delegation, are not widely present in the Mexican context, or if present are not properly deployed. As such it was plain to the delegation that capacity building among investigators is a paramount consideration, not least for the observation of the rights of those against whom offences have been committed, as much as those of the accused.

In any free and open society, a free press is emblematic of that condition. The delegation was concerned to hear of continuing action taken against journalists investigating or reporting on human rights and other issues such as corruption. Such action takes the form of threats, physical violence and death. The delegation took the view that this was a problem that went very much hand-in-hand with the protection of HRDs.

Green shoots

There is reference above to the case of **Bonfilio Rubio Villegas**. A recent Mexican Supreme Court ruling in this case of a man shot dead by soldiers at a checkpoint in Guerrero State in 2009, represents a welcome progressive step. The Supreme Court found that suspects in such cases should be tried in a civilian court. Justice Luis Maria Aguilar was quoted in the international press as stating, "When a person outside the military is either the defendant or the victim, an ordinary judge has authority over the case, not a military judge." The Court found that the military code of justice contravened the Mexican Constitution, which states that "military courts, in no case and for no reason, may extend their jurisdiction over people who do not belong to the armed forces." The ruling sets aside the wider interpretations of the relevant provision of the Constitution relied upon by the Mexican military authorities to justify the use of the military jurisdiction. The Supreme Court is currently examining a number of cases which challenge the principle of military jurisdiction. This is a significant step towards the abolishment of the military jurisdiction in cases involving civilians, with its actual and perceived impunities, and opens a path for a more reliable and effective system of justice for victims of serious human rights abuses at the hands of the military. It is an example of the ability of a robust

judiciary to counter arguments that the military justice system, whilst displaying some instances of abuse, was still effective in these cases if subjected to reform, a view expressed to the 2009 delegation by the then Minister of the Interior.

A further recent decision of the Supreme Court, in the petition for *amparo* by **Hugo Sanchez**, who had been sentenced to 37 years in prison for offences of kidnapping and the possession of firearms, releasing him from that sentence, addressed the fairness of the proceedings at trial and during the investigation of the case, in particular in relation to alleged confessions and the identification procedures used to achieve his conviction. The authors of this report have not yet seen the full judgment but it appears to represent a welcome development in the judicial examination of the question of fairness in the trial and investigatory process.



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