



CARLOS CERDA DUEÑAS

Carlos Cerda Dueñas graduated in law from the University of Guadalajara, gained an MA in Diplomatic Studies from the Matías Romero Diplomatic Studies Institute (Mexican Ministry of Foreign Affairs), followed by a Doctorate from the University of Buenos Aires. He is currently a Professor and Researcher at the Guadalajara Campus of the Monterrey Institute of Technology and Visiting Professor in the Criminal Sciences Doctoral

Programme at the University of San Carlos de Guatemala.

Email: carlos.cerda@itesm.mx

ABSTRACT

A major overhaul of the human rights provisions of the Mexican Constitution led to the incorporation in the revised Constitution of a series of key amendments that have been in force since June 2011. As a result, it is now clearer to see how international human rights standards dovetail with the Mexican legal system's hierarchy of norms. This article aims to analyze and discuss the implications of the constitutional reform, highlighting its significance on the domestic and international fronts while drawing attention to a number of pending issues, and reviewing the prospects for the future application of these new human rights standards in Mexico.

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INCORPORATING INTERNATIONAL HUMAN RIGHTS STANDARDS IN THE WAKE OF THE 2011 REFORM OF THE MEXICAN CONSTITUTION: PROGRESS AND LIMITATIONS

Carlos Cerda Dueñas

1 Introduction

On June 10, 2011, a set of amendments to the 1917 Political Constitution of the United Mexican States referring to human rights was published in Mexico's Official Gazette. Representing a wide-ranging reform of Mexico's approach to human rights, the constitutional amendments for the first time made definitive and explicit reference to human rights, renamed the key Chapter 1, established the supremacy of treaties in domestic law, and incorporated other important human rights provisions.¹

While it is true that a chapter on fundamental individual rights was inserted following the 1847 Reform Act, it was not until the 1992 reform of the 1917 Constitution (still in force) that a National Human Rights Commission (CDH) was formally established, and powers were devolved to the Mexican states to set up their own autonomous human rights commissions. By pointing this out, we do not mean to say that the fundamental rights were not included in the highest constitutional instrument; they have been since the Reform Act of 1847, which created a chapter on individual rights that includes a catalogue of fundamental rights.

According to certain scholars, the lack of clarity regarding specific human rights standards and their indeterminate status within the country's legal structure denoted an incomplete and ill-defined system for addressing human rights issues in Mexico. The issues involved included a lack of definition of human rights and of the international human rights law that applied, and regulatory weaknesses (GUERRERO, 2008, p. 43).

While the modifications published in June 2011 resolved some of these

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issues, consolidation of the constitutional changes will take time. Many outstanding problems remain because, as Alejandro Anaya (2013, p. 786) argues, these positive developments “have not coincided with an encouraging change in the levels of respect for human rights in the country.” However, regardless of setbacks and inauspicious signs, the current efforts to build on the 2011 reform cannot be disregarded.

2 The emergence of human rights in Mexico’s governmental and social agenda

Mexican governments have traditionally considered human rights to be a domestic matter, invariably declaring that any scrutiny by foreigners of Mexico’s observance of human rights would constitute meddling in the country’s internal affairs.

The nationalist, defensive position which valued the protection of sovereignty over and above the international human rights regime has been slowly and gradually giving way to the internationalist and collaborative approach that characterizes Mexico’s foreign policy today.

(SALTALAMACCHIA ZUCCARDI; COVARRUBIAS VELASCO, 2011, p. 3).

Moreover,

... regardless of the real human rights situation in Mexico during the Cold War, it is true that this was not a matter of international concern largely due to the lack of a credible source of information on the subject, i.e. not the Mexican government.

(COVARRUBIAS, 1999, p. 437)

Under President José López Portillo’s administration (1976-1982), important human rights accords were signed and ratified.² However, it was not until Carlos Salinas de Gortari took office in 1988 that the government’s human rights policies began to substantially change course. This was probably not *motu proprio*, but more plausibly driven by concerns about the negative impact that Mexico’s human rights record could have had in the run-up to the North American Free Trade Agreement (NAFTA) or in the negotiations for Mexican membership in the Asia-Pacific Economic Cooperation Forum (APEC) and the Organization for Economic Cooperation and Development (OECD). The outcome was the creation, as mentioned above, of the National Human Rights Commission and local counterparts in each state.

It is interesting to note that:

Up to the early 1990s human rights formed part of Mexico’s foreign policy agenda, primarily anchored in the country’s participation in specialized international human rights organizations. The Mexican government only very rarely tackled the subject as a bilateral relations issue with other countries and interacted little with international non-state actors concerned with human rights.

(SALTALAMACCHIA ZUCCARDI; COVARRUBIAS VELASCO, 2011, p. 4).

Later in the 1990s, especially during the first three years of Ernesto Zedillo Ponce de León's (1994-2000) six-year term, human rights issues were again relegated to the back-burner because of the major economic crisis that beset Mexico in December 1994. The crisis forced the Zedillo government to focus on tackling the country's economic problems rather than on other important issues, including human rights. It was not until the second half of Zedillo's term that attention began to turn again to the subject.

Rosario Green (Foreign Minister in the second half of the Zedillo administration), highlighted Mexico's delays in signing international agreements in her memoirs:

...when I took over at the Foreign Ministry I was surprised to discover that Mexico had failed to sign or ratify international instruments which to me seemed essential for nurturing the country's image abroad. To remedy this situation I chose a step by step strategy, first submitting to the President treaties such as the UN Convention on the Protection of Human Rights of All Migrant Workers and Members of their Families, which had been drafted in response to a Mexican proposal, and had been signed by Mexico but which simply awaited final ratification by our Senate.

(GREEN, 2013, p. 266).

It has also been argued that the government's renewed interest in human rights in the later 1990s was primarily stimulated by the continuing armed conflict in the southern state of Chiapas, where international human rights NGOs, the UN, the OAS, human rights organizations, and a number of foreign governments, were systematically monitoring the situation on the ground and were increasing pressure on the Mexican government to respect the human rights of those involved.

Susana Núñez (2001) considers that the reports the Inter-American Commission on Human Rights issued in 1996 also played a key role, especially those excoriating the Aguas Blancas (Guerrero) incident in which State police attacked members of the Southern Sierra Peasant Organization and killed 17. A further case was that of one General Gallardo, cold-shouldered by the army high command, put on trial and imprisoned with no evidence presented to prove his responsibility for the crimes of which he was accused.

Alejandro Anaya also argues that:

Transnational pressure on the Mexican government tended to intensify considerably after December 1997, when a group of armed civilians allegedly linked to the PRI, then in power in Chiapas as well as in Central Government, perpetrated the most brutal act of violence of the Southeast Mexico conflict: the massacre of 45 Tzotzil Indians (mostly women and children) in the community of Acteal, Chenalhó, Chiapas. The Acteal incident attracted a great deal of attention from the international community on the human rights situation in Mexico, leading to an unqualified and unanimous outcry worldwide.

(ANAYA, 2012, p. 52).

The above scenarios almost certainly prompted the Zedillo government's decision to invite international organizations to observe the human rights situation for themselves. A series of visits followed, including by the Inter-American Commission on Human Rights, the UN High Commissioner on Human Rights (Mary Robinson), and the UN Special Rapporteur on Torture. Arguably of greater importance was the government's decision to take steps towards recognizing the jurisdiction of the Inter-American Court of Human Rights. On this, Rosario Green (2013, p. 266-267) commented, "with the authorization of the President, and after thorough discussions with the Interior and Defence Ministers, [Mexico] accepted the adjudicatory jurisdiction of the Inter-American Court of Human Rights, the Court of San José".³

The election of a different party to government in 2000, after 69 years of consecutive rule by the PRI (Institutional Revolutionary Party), signaled a substantive change in human rights policy:

It was obvious that Mexico had problems related to human rights and was now willing to accept unconditionally and without constraints a higher level of monitoring, scrutiny and cooperation from international actors, including both domestic and foreign non-governmental organizations.

(ANAYA, 2012, p. 61).

In 2003, the Office of the UN High Commissioner for Human Rights (OHCHR), through its representative Anders Kompass, presented a report entitled *Diagnosis of the Human Rights Situation in Mexico* prepared by academics, expert practitioners, and civil society representatives. This assessment's main proposal highlighted the need to reform the Constitution in order to raise the protection of human rights to constitutional rank, to incorporate the concept of human rights as a fundamental pillar of the Constitution, and to recognize international human rights treaties as taking precedence over federal and local norms and directives. An important recommendation in this respect was that all Mexican public authorities should be subject to the international human rights architecture if the Constitution or the government ordinances associated with it were unable to provide the requisite level of protection for individuals against human rights abuses. In addition, the report proposed that a mechanism should be established to ensure the withdrawal of reservations and interpretative declarations and to speed up ratification of pending international human rights accords. The second recommendation called for the enactment of general laws to regulate all the human rights enshrined in the Constitution and to ensure their application, guarantee and protection to the same standards by the federal and local governments for all citizens (NACIONES UNIDAS, 2003, p. VII).

The *Diagnosis* also recommended:

continuing the policy of openness that has been a feature of the current administration [of President Vicente Fox] on human rights. In this regard, to promote visits by rapporteurs and working groups specialized in local human rights issues.

(NACIONES UNIDAS, 2003, p. 3).

Under the Calderón government (2006-2012), while the process of work towards constitutional reform targeted on human rights continued, substantial setbacks arose as a result of the so-called “war on drugs,” including perpetuation of the “*arraigo*” procedure (arbitrary detention), the increased number of disappeared people, and the recurrent and growing human rights violations committed by the armed forces.

According to Anaya, the “openness” policy on human rights still applied because reverting to “policies [which put national] sovereignty over human rights considerations . . . would have incurred too great a cost to the Calderón government and would have led to even more external pressure being applied on Mexico” (ANAYA, 2013, p.784).

The same would apply to the present government. President Enrique Peña Nieto (of the PRI) is well aware of the high domestic political cost as well as the damage that could be caused to Mexico’s international image if the constitutional pledges on human rights were reversed. Although human rights appears to have lost some of its aura during the current administration, given that the new government is focused more on boosting education, housing and energy reforms, Peña Nieto knows that the issue still strikes a major chord domestically and abroad. For this reason, he has made a point during the visit to Mexico of the Inter-American Court of Rights (IACHR) justices’s visit to Mexico in October 2013 of robustly re-stating Mexico’s commitment to fully implement the constitutional amendments w, promising full cooperation with the Court and praising the vital role played by the IACHR in Mexico and the wider region (PEÑA NIETO, 2013B).

3 2011 Constitutional amendments on Human Rights

The current Mexican Constitution formerly contained a chapter listing individual agrarian and labor rights. This list gradually lengthened over the years (and due to various reforms) to include, for example, the Right to Health and Decent Housing (1983), Indigenous Rights (January 28, 1992 and substantially expanded in 2001), the Right to a Healthy Environment (1999), the Right to Access to Culture “and the Exercise of Cultural Rights” (2009), the Right to Physical Exercise and Sport, and the Right to Food (2011) and Water (2012).

However, the 2011 constitutional reform exhaustively expanded the catalog of human rights by taking into account all the rights contained in the treaties signed by Mexico. The reform resulted in Chapter 1 of Title 1 henceforth being named “Human Rights and their Guarantees.” The articles under Title 1 describe a series of other measures of relevance to human rights, including the State’s responsibility to prevent, investigate, penalize and redress violations to human rights, a task that involves implementing specific regulatory legislation; the promotion of human rights in public education; respect for human rights in the prison system; a person’s right to seek refuge or political asylum; the restriction of certain rights to be prohibited in the event of a suspension of rights enacted by the competent authority, pending further legislation; foreigners

granted the opportunity to challenge deportation; the normative principle of foreign policy introduced with a view to ensuring respect for and protection and promotion of human rights; public employees to justify any refusal to accept the recommendations of the National Human Rights Commission; the CNDH given powers to investigate serious human rights violations and to pursue legal proceedings through actions of unconstitutionality.

The reform made it an obligation of the State to prevent, investigate, and punish human rights violations by taking legal measures through the courts. It also foreshadowed the issuance of a set of secondary laws to give legal force to the amendments as well as laws of a political and administrative nature to ensure appropriate treatment of victims. The reform was well received by Mexican public opinion, with the exception of certain groups who argued that with these amendments the country was ceding sovereignty, with the interpretation of the new provisions subject to criteria imposed by supranational bodies such as the UN (SCALA, 2011, p. 1). Criticism was also forthcoming from some sectors of the federal judiciary, which will be discussed below.

4 The Supreme Court (SCJ) and human rights standards

The human rights-related constitutional reform throws new light on the hierarchical position occupied by the relevant treaties within the Mexican legal system. While the original article 133 of the Constitution established that all current and future treaties would constitute the supreme law of the State and were therefore considered to be valid, then the absence of an established treaty hierarchy within the country's legal structure involved a risk of them inadvertently clashing with other laws.

For example, in a case that came before the SCJ on May 11, 1999, the Court resolved the question of the writ of *amparo* appeal 1475/98 lodged by the National Union of Air Traffic Controllers (MÉXICO, 1999) concerning the social right of individuals to freely join unions of their choice. This involved addressing a series of discrepancies between Federal Law and a treaty signed by Mexico under the auspices of the International Labour Organization. The outcome of the case was ruling 192.867, which established that "international treaties come second place immediately below the fundamental law and above federal and local law" (MÉXICO, 1999 b). This was ratified in *Amparo* 815/2006 (MÉXICO, 2007) and in 13 others in which the Supreme Court upheld (on February 13, 2007) the thesis that, while from a hierarchical standpoint international treaties are subject to the Constitution, they nevertheless take precedence over federal, state and Federal District laws.

On the other hand, the Inter-American Court of Human Rights in November 2009 ruled against Mexico in the Rosendo Radilla case (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2009). This was the same case that the Supreme Court analyzed (in full session) following alleged disagreements over the relevance of Inter-American Court rulings in the Mexican legal system. The SCJ unanimously ruled on July 14, 2011 that it was possible for the Court to take account of international treaties even in cases where the plaintiff had not

had recourse to such treaties. The ruling was issued only thirteen days after the constitutional reform on human rights was enacted. In the judgment confirming the Court's decision (MÉXICO, 2011 b), the Supreme Court Plenary ruled that: a) The sentences of the Inter-American Court of Human Rights are binding on all bodies and branches of government; b) all Mexico's judges are under an obligation to exercise conventionality control; c) interpretative criteria contained in the IACHR jurisprudence are "guidelines" to be followed by the Judicial Power of the Federation.⁴ The question arises at this point: what would have happened if the Supreme Court had decided on the opposite course of action? Could Mexico simply have argued that it would not accept the judgment because the Court had established that it was not a binding obligation? Note that this is an issue involving the Mexican state and all its constituent bodies (not exclusively the administrative branch), meaning that everyone concerned has a responsibility to contribute to ensuring compliance with, and the effectiveness of, human rights.

As of July 2011, there was no longer any doubt that international human rights standards contained in treaties to which Mexico was a signatory formed part of the Mexican legal system and enjoyed the same rank in the hierarchy as the norms established in the Constitution. However, it was not until September 3, 2013 in Case 293/2011 that the Supreme Court Plenary resolved this contradiction (MÉXICO, 2013). The Court defined the criteria that were henceforth to prevail regarding the constitutional position of international human rights treaties, and thus finally providing an unequivocal benchmark for Mexican judges to proceed with executing the new constitutional human rights reforms. The Full Court decided by a majority of ten votes that article 1 of the Constitution generated a set of human rights standards, of both a constitutional and conventional origin, governed by interpretative principles, among which no distinction could be made regarding the source from which the said rights were derived. It was overwhelmingly decided that internationally-framed human rights based on amended article 1 of the Mexican Constitution possessed the same normative efficacy as the rights set forth in the Constitution. In other words, they were henceforth acknowledged as enjoying the same constitutional status. In this way it was fully recognized that the substantially expanded list of human rights contained in the 2011 amended version of the Constitution would lead to enhanced harmonization of national and international human rights based on the *pro personae* principle, thus paving the way for the broadest possible protection for individuals.

At the same time, the SCJ determined that was an explicit constitutional restriction limiting the exercise of human rights existed this should follow the constitutional norm i.e. acknowledging constraints on the exercise of human rights and restoring the supremacy of constitutional norms. This provision has not been well received by civil society organizations, which have criticized it as regressive. As it happens, the Full Court fortunately confirmed later that it was mandatory for Mexican judges to abide by the case law of the Inter-American Court of Human Rights, including in cases of disputes to which Mexico was not a party, provided that it was more advantageous to the individual.

5 Outstanding issues from the Constitutional reform

The reform as a whole undoubtedly represents an important step forward in terms of human rights observance in Mexico. However, certain issues remain unresolved, failing which it would be difficult for Mexico to project an upbeat human rights message domestically and to the wider world.

The 2011 reform provided that the State should meet its obligation to issue a set of regulatory laws aimed at improving implementation of the new standards contained in the Constitution. Although a June 10, 2012 deadline was set to, the authorities failed to adhere to it. The pending items of legislation are as follows:

a) Compensation for violations of human rights

Paragraph 3 of article 1 now states that all authorities, in the exercise of their respective functions, have the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility and progressive realization. As a consequence of this obligation, the State must prevent, investigate and sanction human rights violations within the limits established by law. No law has yet been issued.

b) Law of Asylum

The Law on Refugees and Complementary Protection has so far formed the basis for addressing asylum cases.⁵ Committed to complying with the third transitory article of the decree related to human rights constitutional reform, President Felipe Calderón submitted a bill to the Senate on October 9, 2012 calling for asylum questions to be incorporated in this law, to be known henceforth as “The Refugee, Complementary Protection and Asylum Law.” While the Senate Committees debated and supported this Presidential initiative throughout April 2013, including taking account of the recommendations of the Office of the UN High Commissioner for Refugees, the final version of law still awaits approval by the legislature.

c) Suspension or restriction on the exercise of rights and guarantees

Article 29 of the Constitution relating to the suspension or restriction of guarantees is also subject to a regulatory law (still pending). It should be noted that not all the rights and guarantees are subject to restriction or suspension, and that those that are not are clearly defined as such. A further point is that restrictions on the exercise of rights and guarantees must be founded and justified under the terms established by the Constitution and be “proportionate to the threat in hand,” while being consistent at all times with the principles of legality, rationality, proclamation, publicity and nondiscrimination.

Finally, as part of the constitutional reform, transitory article 8 asserts that Congress shall regulate the National Human Rights Commission Law within a period of one year commencing from the date of entry into force of the reform decree published on June 10, 2011. The relevant amendments to the law were published on June 15, 2012

and gave the CNDH full authority to investigate acts involving serious violations of human rights when this was judged appropriate, or requested by the Federal Government, a State Governor, the Head of the Federal District, one of the Houses of Congress or the State legislative chambers.⁶ It was also decided that if CNDH's recommendations were not being accepted or complied with, the authorized person or public servant concerned would be required to establish, actuate, and make public the reason for this refusal and respond to calls by the legislature to appear before it to present a satisfactory explanation. In the event of persistent failure to offer the latter, the CNDH may report those judged to be responsible to the Public Prosecutor or another appropriate administrative body. This law has been the most widely complied with of all the measures listed in the reform decree.

Speaking at the ceremony to mark the 96th Anniversary of the Promulgation of the Constitution on February 5, 2013, President Enrique Peña said:

Finally, the most important aspect of this commemoration is to comply with the Constitution. The best tribute we can and must make to our Supreme Law is precisely to do what those who have spoken before me: comply with the Constitution, and observe and enforce the provisions contained therein.

(PEÑA NIETO, 2013a).

Adding that it was vital:

...to recognize that laws exist to regulate constitutional articles that have not yet been submitted, approved and published. Core subjects such as human rights, security and criminal justice, protection, crimes against journalists, education, water, or children's best interests, are still awaiting regulation in secondary law. We authorities have an obligation to work towards completing these outstanding tasks.

(PEÑA NIETO, 2013a).

In similar terms, Javier Hernández Valencia, an Office of the High Commissioner for Human Rights representative in Mexico, speaking on the 2nd anniversary of the constitutional reform, urged Mexican legislators to prepare the long overdue regulatory legislation on the subject, saying that the mandatory one-year deadline for the new regulations to be published had already expired. It was crucial to note that human rights reform:

...did not come to a standstill simply with the publication of the law in the Official Gazette. Temporary articles with deadlines attached for producing secondary legislation have not progressed. Deadlines have expired. We therefore call upon everyone concerned to join together and make abundantly clear that we are committed to finalizing and consolidating this reform.

(OTERO, June 10, 2013).

In the Mexican legislative process, the executive branch, federal legislators, and state legislators can propose and submit bills. In other words, this is not solely a

prerogative of the executive (since the transitory clauses of the reform did not grant it explicit responsibility for this). Consequently, any one of the 500 deputies, 128 senators, or representatives of the 31 local legislatures can submit bills that could reduce legislative delay. However, it is clear that no sanctions exist to penalize non-compliance with deadlines.

Another pending issue in the legal arena is the signature and/or ratification of human rights-related treaties to which the Mexican government is not yet a party, and the withdrawal of Mexico's reservations to agreements which have already been ratified but which contradict or impede full compliance with human rights (a reservation in international law is a caveat to a state's acceptance of a treaty). For example, in the first case, the UN Optional Protocol of the International Covenant on Economic, Cultural and Social Rights adopted by Resolution A/RES/63/117 of December 10, 2008 (NACIONES UNIDAS, 2008), which Mexico has yet to ratify despite the Mexican government's active participation in the negotiating and adoption process. As for the question of withdrawal of reservations, a prime example is that of the above-mentioned mechanism covering deportation of foreigners that, notwithstanding the constitutional reform, has yet to be withdrawn. Since the amendments introduced in 2007, withdrawing reservations currently requires Senate approval.

Finally, it should be noted that:

The system for incorporating international human rights norms and standards is especially weak because only those treaties are recognized as a source of the same (human rights), while neglecting other international law sources such as customs, general principles of law or the rulings of international legal bodies.

(GUERRERO, 2008, p. 43).

In order to avoid leaving out other sources of law, it would have been a good idea (in the reformed constitution) to refer to "international instruments" instead of referring exclusively to "treaties," which the Bolivian Constitution provides.⁷ This restrictive approach to treaties adopted in the reformed Mexican constitution could well have negative consequences, e.g. it could be argued that the Declaration of the UN Convention on the Rights of Indigenous Peoples (NACIONES UNIDAS, 2007a) possesses the legal form of a "resolution," and, given that it is not an "international treaty" it would not be considered valid in the event of a constitutional interpretation under the Supreme Law of the Union according to article 133 of the Constitution.

There is also the case of the International Criminal Court (ICC). Mexico became a State-Party in October 2005, after a lengthy period which began with negotiations before the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome in June-July 1998) (NACIONES UNIDAS, 1998).

However, by constitutional provision, recognition of the ICC's jurisdiction has been subject to Mexico's executive branch's authority, which must deliberate on a case-by-case basis. ICC jurisdiction also requires Senate ratification. This can be summed up as follows: "The Federal Government may, with the approval of the Senate in each case, recognize the jurisdiction of the International Criminal Court." This kind of

arrangement is unfortunate, since it goes against the spirit of the Rome Statute that declares, “the State which becomes a Party to this Statute hereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.”⁸ The Mexican procedure complicates submission of a case to the ICC, and undermines the permanent criminal court’s authority to inhibit conduct that the court will sanction. By allowing a body to intervene that depends on the correlation of forces existing at the time a particular case is being addressed politicizes ICC jurisdiction in Mexico’s case.

The argument that this formula was adopted to safeguard the legal status of Mexican nationals is unfounded. Furthermore, it is shortsighted and demonstrates ignorance of the ICC’s role, since Mexico should hand over alleged international criminals regardless of their nationality. If Mexico’s aim is to confirm and safeguard the rights of both Mexican and non-Mexican citizens responsible for committing this type of crime that in theory should be handed over to the ICC, it is worth asking why this should be done in Mexico by a political rather than judicial body.

The reference to the ICC in the Constitution is a kind of “hidden reservation” according to Manuel Becerra Ramirez who argues that the Statute does not accommodate reservations because the practice is inconsistent with its aims and purpose (BECERRA, 2006, p. 951-954). While this situation remains unresolved it would be interesting to see whether, in the event of a case being presented to it, the Mexican Senate would apply the same rigour to combat impunity and punish crimes as the ICC.

6 The Inter-American Court of Human Rights

The Inter-American Court of Human Rights’ jurisdiction should be understood as an “external” procedure with inevitable “domestic” impacts that are not necessarily favorable in cases where the State is called upon to acknowledge its role in violating human rights (COVARRUBIAS, 1999, p. 451).

Since recognizing the jurisdiction of the IACHR in 2012, the Mexican government has been condemned in five cases. Highlighting the fact that the preliminary temporal jurisdiction objection (*ratione temporis*) presented in Mexico’s first case at the court, *Martín del Campo Dodd vs. Estados Unidos Mexicanos* (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2004), ruled in favour of Mexico and, in the second case (Jorge Castañeda Gutman), was acquitted of some of the charges that concerned political rights rather than access to justice, the Mexican government’s stated position is that it has at no time refused to acquiesce to summonses and has acknowledged the errors of officials who have violated human rights. Its aim has been to achieve a favorable judgment, especially to avoid undermining the prestige and image of the country. For example, it has sought to fully acknowledge the facts of cases in order to demonstrate that Mexico is committed to safeguarding human rights. It is worth noting however that Mexico’s experience with the IACHR leaves much to be desired: procedures are complex, long, and drawn out in cases where Mexican officials are alleged to have violated the human rights of Mexican citizens. Moreover, Mexico has lost most of the cases and has thus been forced to pay

compensation to victims or their families. This is money that could be better allocated to programs for promoting and protecting human rights. In a number of previous cases (e.g. Chiapas), negotiations with victims took place before the trials, but this approach was at the behest of the Oaxaca state government and not the federal government. In October 2012, the head of the Attorney General's Office (AGO), publicly apologized on behalf of the Mexican government to the families of Jesús Ángel Gutiérrez Olivera, who was "disappeared" in March 2002 due to actions undertaken by members of the former Federal Investigation Agency (AFI) and the AGO in Mexico City. Admission of liability by the government for Gutiérrez Olivera's disappearance was resolved by the Friendly Settlement Agreement negotiated in the seat of the IAHR (San José) by government representatives and the victim's relatives. The latter, supported by the Federal District Human Rights Commission (CDHDF), appealed to the IAHR to denounce the impunity that allegedly characterised the case. With the exception of these two cases, Mexico has tended to distrust the actions and recommendations of both the Inter-American Court and the Commission. The Mexican government has on at least two occasions accused the former of partiality.

7 Universal Periodic Review

The Working Group on the Universal Periodic Review (UPR), established in conformity with Resolution 5/1 of the UN Human Rights Council on June 18, 2007 (NACIONES UNIDAS, 2007 b), reviewed the situation in Mexico at its 4th session (February 2-13, 2009). On February 10, 2009, the Minister of the Interior, Fernando Gómez Montt, presented the Mexican National Report, adding *inter alia* that Mexico participated in the UPR because it was convinced that the promotion and protection of human rights was a "universal and inalienable obligation and universal moral imperative" and that cooperation with international human rights mechanisms was an invaluable tool for promoting internal structural changes (NACIONES UNIDAS, 2009, p. 3).

Certain recommended changes to the general legislation on human rights offered by UPR Working Group members included:

1. To consider gradually withdrawing reservations to international human rights instruments (Brazil);
2. To continue the reforms undertaken so far to enable all citizens to enjoy full human rights and fundamental freedoms, and to ensure the harmonization of domestic legislation with the country's international commitments (Morocco);
3. To complete institutional efforts for international human rights standards adopted by Mexico to enjoy constitutional status and to be applied as supreme law in legal proceedings (Spain);
4. To effectively incorporate into domestic national legislation the provisions of international human rights instruments (Azerbaijan);

5. To harmonize federal and state legislation with international human rights instruments (Bolivia, Spain, Guatemala, Turkey, Uruguay) and to ensure the effective implementation of these instruments (Turkey) (NACIONES UNIDAS, 2009, p. 21-22).

Finally, it should be noted that the war against drugs waged by the Calderón government, which still affects the present administration, generated an as-yet-undisclosed number of missing persons. Furthermore, Mexico is now considered to be one of the world's most dangerous countries for journalists. In this regard, Special Prosecutors' Offices and the Missing Persons Search Unit have recently been set up to investigate crimes against freedom of expression. It is still too early to evaluate the results.

8 Conclusions

There is no doubt that the June 2011 constitutional reform raised the profile of human rights standards in Mexico. It elevates the rights enshrined in international treaties signed by Mexico to equal footing alongside the rights guaranteed by the Mexican Constitution. The fact that human rights are now mainstreamed in the Constitution constitutes a significant breakthrough, and their position in the hierarchy of the Mexican legal system serves to clarify the Mexican State's human rights obligations. While there are still critics and detractors who are reluctant to accept the new approach, the constitutional provisions on human rights are nevertheless a key step towards improving Mexico's image as an observer of fundamental rights. However, much work needs to be urgently undertaken to render them more precise and comprehensive.

Finalizing the pending issues outlined above would reinforce Mexico's human rights policies, and would substantially improve the country's image regarding respect, promotion and protection of these rights. At the same time, further disseminating the country's human rights agenda in multilateral and bilateral forums would be an invaluable way of embracing a variety of other issues, while providing opportunities for creating partnerships and securing support for Mexico's views (PADILLA RODRIGUEZ; FERNÁNDEZ LUDLOW, 2012, p. 91-92).

Today, the basic challenge is to ensure that observance of human rights on the domestic front is consistent with Mexico's discourse in the international arena. A sound human rights policy involves commitments both internally and externally. The current President's statement in his address marking the 96th anniversary of the Constitution that "for large numbers of Mexicans rights only exist on paper" (PEÑA NIETO, 2013a) could well be applied not only to "rights" but to all the other regulatory provisions contained in the Constitution as guiding principles of our foreign policy. The newly incorporated principle of respect for, and protection and promotion of, human rights, will turn out to be a dead letter unless Mexico adopts a firm policy to finalize the domestic and international aspects of the aforementioned three outstanding items in the reform process.

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NOTES

1. The constitutional reforms regarding human rights and protection led the Supreme Court to consider that these regulatory revisions establishing new obligations regarding respect and protection of rights were a paradigm for Mexico. In view of the importance of the issue, the Supreme Court decided that October 4, 2011 would mark the beginning of its Tenth Jurisprudential Epoch, publication of the judicial review procedures of the Plenary and Chambers (Salas) of the Supreme Court, together with the Federal Collegiate Courts.

2. In the late 1980s the Mexican Senate ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Political Rights of Women, the American Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on Territorial Asylum, the American Convention on the Granting of Political Rights to Women.

3. Note that some reports of the Inter-American Commission on Human Rights recognized the compulsory jurisdiction of the Inter-American Court.

4. In its legal opinion on the Rosendo Radilla case, the Supreme Court Plenary (2011 b) also ruled

that where a civilian has had his/her human rights violated by the armed forces, ordinary case law and not military jurisdiction shall apply.

5. The Law on Refugees and Complementary Protection was published in the Official Gazette on January 27, 2011. It entered into force the following day and was regulated on February 21, 2011.

6. This facility was previously exercised by the Supreme Court of Justice but was effectively devoid of status because the SCJ considered that it was confined to issuing a statement, thereby failing to implement specific actions to respond directly to the circumstances which had generated the serious rights violation.

7. The Bolivian Constitution (Paragraph 1, Article 256) provides that "Treaties and other human rights 'international instruments' that have been signed, ratified or acceded to by the State and which contain provisions that are more favorable to the Constitution, shall apply preferentially to the relevant constitutional provision" (BOLIVIA, 2009).

8. Paragraph 1, Article 12 of the Rome Statute of the International Criminal Court (REVISTA JURÍDICA DE BUENOS AIRES, 1998, p. 176).

RESUMO

A Constituição Política dos Estados Unidos Mexicanos foi objeto de uma reforma integral no que se refere aos direitos humanos e se encontra vigente desde junho de 2011. Com essa emenda, estabeleceu-se de forma mais nítida como as normas internacionais de direitos humanos se posicionam na pirâmide hierárquica das normas do sistema jurídico mexicano. Este artigo pretende analisar e comentar as implicações que essa reforma acarreta, com especial ênfase no devir histórico para o reconhecimento dessas normas, bem como a reforma constitucional e suas pendências, abordando também sua dimensão tanto no cenário doméstico como no internacional.

PALAVRAS-CHAVE

Incorporação de normas – Direitos humanos – Reforma constitucional – Política exterior – México

RESUMEN

La Constitución Política de los Estados Unidos Mexicanos fue objeto de una reforma integral en materia de derechos humanos que se encuentra vigente desde junio de 2011. Con dicha enmienda, se estableció de forma más nítida cómo las normas internacionales de derechos humanos quedan posicionadas en la pirámide jerárquica de las normas dentro del sistema jurídico mexicano. Este artículo pretende analizar y comentar las implicancias que conlleva la reforma señalada, haciendo especial énfasis en el devenir histórico para el reconocimiento de dichas normas; la reforma constitucional y sus pendientes, visualizando también su dimensión tanto en lo doméstico como en el escenario internacional.

PALABRAS CLAVE

Incorporación de normas – Derechos humanos – Reforma constitucional – Política exterior – México