

Globalization and Human Rights Reflections about Mexico

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The Movement for Peace with Dignity arrives at Mexico City's main Zócalo square. One of its central demands is the creation of a strategy to fight organized crime that includes unrestricted respect for human rights.

INTRODUCTION

Many people think that globalization has only an economic or financial dimension. However, they forget that it can and also must be a process that provides shared standards for all on the issue of human rights, so that where a person is born or his/her nationality does not matter in determining his/her ability to enjoy the same rights and live a decent life.

The extremely important constitutional reform on human rights published in Mexico's *Diario oficial de la federación* (Federal Official Gazette) June 10, 2011 provides us with an ideal framework for once again defending the idea that globalization without shared respect for human rights is of scant value.

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The constitutional reform is certainly original, since it seems to swim against the intuition and historical practice according to which Mexico had been completely closed to any kind of external influence around human rights issues. As with all authoritarian regimes, for decades, Mexican administrations were profoundly perturbed when international observers or officials came to spotlight the enormous problems we had—and to a certain extent, continue to have—in the field of human rights. The excuses they presented, always linked to a very poor understanding of what constitutes national sovereignty, were pitiable.

Fortunately, the advance in the democratic transition and the opening of Mexico's borders have also brought a breath of fresh air to the issue of human rights, as is so correctly expressed in the June 2011 constitutional reform. Let us look at its principle contributions.

THE NEW PLACE OF INTERNATIONAL TREATIES

The reform incorporates into Article 1 a mandate stating that the rights established in the Constitution itself and in the international treaties to which Mexico is a signatory must be recognized for all persons in Mexican territory. This raises human rights treaties to a constitutional level, as has been done in other countries in Europe and Latin America. This is based on the supposition that the Constitution and international human rights treaties are on the same level, so that when they are applied, the norm that protects a specific fundamental right more broadly must take precedence.

As is well known, international treaties have been an essential driving force in the recent development of fundamental rights worldwide, although obviously to a differing degree depending on the country. International treaties and their interpretation by bodies like the United Nations, the International Labor Organization (ILO), and the Organization of American States (OAS), among others, include rights that are not included in the Mexican Constitution. They also provide complementary perspectives to those offered in our Constitution (for example, when an international treaty establishes dimensions of a certain right not included in our document). There are now approximately just under 150 international treaties and protocols on human rights, so that means we can speak of an intense process of international codification of rights.¹

Human rights treaties can be general or sectoral. The former regulate many kinds of rights or ascribable rights in general terms for all people. The latter include rights for certain kinds of persons or that refer to certain issues. Among the first we can mention the International Covenant on Civil and Political Rights, or the International Covenant on Economic, Social, and Cultural Rights, both from 1966. In Latin America, the most important general treaty is the American Convention on Human Rights, known as the Pact of San José, Costa Rica, signed November 22, 1969.

Among the sectoral international treaties used most frequently or cited most often in specialized literature are the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the ILO conventions on different aspects of workers' fundamental rights.² In Latin America, we can point to the Inter-American Convention to Prevent, Sanction, and Eradicate Violence against Women, known as the Belém do Pará Convention, and the Inter-American Convention for the Elim-

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ination of All Forms of Discrimination against Persons with Disabilities.

WHAT MUST MEXICO DO TO BETTER PROTECT HUMAN RIGHTS?

With the reform, Article 1 of the Constitution stipulates that the Mexican state must prevent, investigate, sanction, and make reparations for the violation of human rights. It is interesting to point out the need to prevent these violations, which will always be "cheaper" than acting after the fact.

Rights violations can be prevented in several spheres and on several levels. Naturally, the rights and their content must be disseminated in such a way that both authorities and private individuals know what the Constitution and international treaties stipulate. Knowledge and dissemination of these rights are valuable tools to prevent their being violated.

At the same time, government agents must be trained so they carry out their tasks stipulated by law in a way that is respectful of rights. This is especially important for officials involved in public security; although it is sometimes said that the effectiveness of the state in pursuing criminals requires a certain "laxness" in respecting rights, there is actually no incompatibility between human rights and public security. Quite to the contrary: no one will have security if human rights are not respected. In addition, we must be clear that public security of all persons is a human right. Training the guardians of security can also prevent many violations of rights.

The third kind of prevention is the creation or improvement of internal mechanisms for supervision and follow-up of public bodies. When employees know they are being closely watched and all their actions must be scrutinized and supervised, they are much more careful about what they do.

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internationally. This means that institutional structures in charge of doing this work must be substantially improved to avoid future condemnations and, above all, to be able comply with the new constitutional mandate.

ASYLUM AND REFUGEE STATUS

The reform adds a new second paragraph to Article 11 of the Constitution as one of many in the context of this important reform on human rights, a reform that has been dubbed the most profound and modernizing in decades. One of this reform's signposts is the vocation to situate Mexico within the international parameters of protection of fundamental rights. Just to cite a few examples, this vocation can be seen in raising to a constitutional level the human rights treaties (Article 1), and the recognition that the protection of human rights must be a guiding principle of Mexico's foreign policy (Article 89, Subsection X). It is in this context that the new second paragraph of Article 11 must be understood.

This addition makes it possible to distinguish between two legal concepts: asylum and refugee status. But it also stipulates that the reasons for requesting either of these two statuses are different. Asylum can be requested on the basis of persecution for political reasons, while refugee status must be argued on the basis of humanitarian causes. We could say, then, that asylum is requested in the case of ideological persecution in the broad sense of the term, without reducing the term "political" to merely electoral questions. Refugee status is appropriate when violations to social rights are proven, as would be the case if these rights were clearly and massively violated by a country, or even if they were violated solely in the case of the applicant or his/her relatives.

The amendment to Article 11 leads us to reflect about the basis for the role that the right to asylum and refugee status plays today in our globalized world; that is, the right of every person to be received by a particular state when certain circumstances arise that do not allow him/her to continue living in his/her own country. This is an issue that brings us face to face with obvious dilemmas, both legal and political. It seems difficult to sustain the universality of rights and their character of essential protections for all human beings if those protections are denied persons who are in the worst situation of all: those who not only do not have the protection of their own state, but are also persecuted and attacked by it. The vulnerability worldwide of refugees, stateless persons, illegal immi-

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grants, and “people without documents” is something we cannot close our eyes to.

HUMAN RIGHTS AND MEXICO’S FOREIGN POLICY

The reform also adds Subsection 10 to Article 89 to incorporate “the respect, protection, and promotion of human rights” as a principle of the Mexican state’s foreign policy, a responsibility which falls to the president. This implies that human rights have become the guiding principle of Mexican diplomacy, and our country can no longer remain neutral about their violation. If violations are proven, Mexico must add its voice to international condemnations and apply the corresponding diplomatic sanctions in accordance with the applicable legal stipulations.

It cannot be said that there is a commitment to rights if they are only defended and protected within our national territory. The Mexican state’s actions must be consistent inside and outside its borders. What is defended internally must be defended externally. In this context, Mexico’s behavior in international and regional human rights bodies must be more active and clear in its defense of human rights.

For many years now, Mexico’s diplomacy has been carried out on a high level, nourished by a corps of professional civil servants who are among the country’s best; this means it has the trained human resources needed to fully carry out the new mandate of Article 89, Subsection 10 of our Constitution.

BETTER RIGHTS, BETTER GUARANTEES

If the proclamation of human rights is not accompanied by an appropriate regimen of guarantees to prevent and, if necessary, sanction the violation of those rights, it will be of very little use. For that reason, the reform also significantly strengthens the National Human Rights Commission (CNDH) and its local counterparts.

In accordance with the new text of Article 102, Section B, public servants who do not accept CNDH or its local counterparts’ recommendations are obligated to publicly substantiate and argue their refusal. All recommendations must be responded to, whether they are accepted or rejected.

If an official rejects a recommendation, he/she can be subpoenaed to appear before the Senate or the Permanent

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Commission (if the recommendation is from the CNDH), or the state legislature (if the recommendation was issued by a state commission). In addition, the Constitution mandates the establishment of a mechanism for public, transparent consultation to elect the head of the CNDH and the members of its Consultative Council.

CONCLUSION

Clearly, the reform of the Mexican Constitution contributes interesting elements for moving forward toward globalization with a human face, in which human rights are the main point of reference for public action and peaceful civic life.

Human rights are the parameter for evaluating whether we are moving ahead, standing still, or moving backward regarding respect for human beings’ most important values, shared by all persons regardless of their place of birth, race, religion, sexual preferences, ideology, etc.

As always happens in constitutional matters in Latin America, after the reform has been passed and published comes the most difficult part: turning it into a reality through the dedicated, committed actions of public officials, judges, and social and academic organizations. This will be our greatest challenge in the coming years. ■■■

NOTES

¹ See Carlos Villán Durán, *Curso de derecho internacional de los derechos humanos* (Madrid: Trotta, 2002).

² Especially important are Conventions 87 (on union freedom), 89 (on the right to unionize), 111 (on discrimination in employment), 118 (on equal treatment), 138 (on the minimum age for working), 143 (on migrant workers), 169 (on indigenous peoples), and 182 (on the prohibition of child labor).