Improving Human Rights in Mexico: Constitutional Reforms, International Standards, and New Requirements for Judges

*by Víctor Manuel Collí Ek**

Introduction

In Mexico, the defense of human rights is rapidly evolving due to a series of constitutional amendments passed in 2011. On June 10, 2011, provisions of the Mexican Constitution changed profoundly, due to modifications of eleven articles, which came to be known as the 2011 Human Rights Amendments (HRA 2011). The amendments transformed the way human rights will be defended in Mexican society.

This article will focus on two broad issues. First, it will address how the modifications affected the Constitution in terms of its composition, articles, and concepts, as well as the reasons for these modifications. Second, this article will examine the most important effect of the modified amendments on the defense of human rights, namely the creation of a new juridical system of human rights protection that includes national and international standards.

Mexican Congress

The first section will explain the constitutional reform process and the main reasons for its existence. The second section will explain the political background that should be taken into account to understand the HRA 2011. The third section will analyze the most important concepts of the amendment, in order to make a connection between articles that were changed, and the reasons for the changes. The final two sections will discuss the immediate effect of the amendments, that is—the new juridical system of human rights protection—which was established through an interpretation of the Mexican Constitution by the Supreme Court in the context of the *Radilla-Pacheco* case.

Constitutional Amendment Process

On June 10, 2011, eleven articles (1, 3, 11, 15, 18, 29, 33, 89, 97, 102, and 105) of the Mexican Constitution were modified[1] in one of the most significant constitutional changes to date in Mexico. The main theme of the modification focused on the enhancement of human rights protection through the adoption of, among other mechanisms, the *pro homine* principle and international human rights standards.

This reform process had two stages. The first round of debates took place in the House of Representatives on April 23 and 28, 2009, and in the Senate on April 7 and 8, 2010.[2] During these debates, the wording of "Human Rights and their guarantees"[3] was adopted, and the following were established as state obligations and non-derogable rights: the promotion of human rights in Mexican education, the respect of human rights in extradition treaties and in the prison system, and the suspension or derogation clause.[4]

The second round of debates took place in the House of Representatives on December 14 and 15, 2010, and in the Senate on March 3 and 8, 2011. This round changed the reference from "Human Rights Treaties" to the more inclusive "International Treaties," added the prohibition against sexual discrimination, changed the wording of "freedom of religion" to "foster any religious belief,"[5] included these within the set of non-derogable rights, and transformed the Investigative Authority of the Supreme Court into the Human Rights Commission.

Broader Picture: The Political Background of the State Reform Ideology

The HRA 2011 must be seen as part of the broader aim to enhance constitutional mechanisms to better protect human

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Mexican Supreme Court

rights in Mexico that began several decades ago as part of a general state reform. This concept was evident in political speeches, doctrinal studies, and the media, but it was not until 2007 that concrete and practical developments resulted.

In connection with this social movement, the Mexican Congress enacted the State Reform Legislation (SRL),[6] which aimed to establish a legislative mechanism to carry out profound changes in Mexico. The SRL initiative occurred over a one-year period in 2008. Through the new legislation, the SRL created an Executive Committee for the Negotiation and Construction of Agreements, composed of Representatives and Senators. The Committee was tasked with studying the following themes: the scheme of State and Government, democracy and the electoral system, federalism, the judiciary, and social guarantees. During the year that it was active, the SRL process did not create effective change, but it has continued to influence discussions on constitutional reform, and was a contributing factor in the HRA 2011 reforms, as well as other reforms leading up to the HRA 2011.

The only modification made under the SRL, and the first major constitutional amendment enacted, is the "Justice Reform" of 2008.[7] This reform addressed issues of the adoption of an adversarial criminal system, an alternative mediation process, new tasks for the prosecutor, a presumption of innocence, and special procedures against organized crime. Following this early reform, a second important constitutional amendment passed four days prior to HRA 2011, on June 6, 2011.[8] This amendment reformed the writ of *amparo*, which is the only constitutional procedure available to citizens to defend human rights violations. The writ of *amparo* protects citizens and their basic guarantees, and protects the Constitution itself by ensuring that its principles are not violated by statutes or actions of the state that undermine the basic rights enshrined within it. The main elements of the *amparo* amendment were: a) to protect human rights in international treaties, b) to establish "class action," c) to establish a general declaration of the *amparo* effects, and d) to establish a broader way to activate the *amparo* procedure, among others.[9]

Following the HRA 2011 amendments, a fourth constitutional amendment aimed at strengthening the democratic electoral process was enacted on August 9, 2012. It prioritized Congress's treatment of bills proposed by the president, meaning that they will be immediately analyzed by Congress. It also established new processes to replace the president; new forms of inclusive democracy, such as referenda and plebiscites; and the inclusion of independent candidates.

In sum, Mexico has witnessed four bedrock modifications during the last five years under the State Reform ideology—in criminal procedure, political and democratic participation, and human rights recognition and protection—all with the goal of greater citizen participation and inclusion. The HRA 2011 should be viewed within the framework of these broad changes designed to strengthen Mexican democracy and provide background for the existence of a national will to improve human rights protections.

The Constitutional Amendment of HRA 2011
At Last, Human Rights

The constitutional amendment changed the language used in Title 1, Chapter 1, of the Mexican Constitution, which before HRA 2011 was called "*De las Garantías Individuales*" (Individual Rights) and is now called "*De los Derechos Humanos y sus garantías*" (Human Rights and their guarantees). This is the first change to this Chapter since 1917, when the Constitutional Assembly, convened by the First Chief Carranza of the Constitutional Army, created the Constitution.

> The HRA 2011 must be seen as part of the broader aim to enhance constitutional mechanisms to better protect human rights in Mexico that began several decades ago as part of a general State reform.

Before settling on the term "human rights," the drafters of HRA 2011 discussed using the terms "individual rights" or "fundamental rights." "Individual Rights" referred to a nineteenth and early twentieth century state discourse that espoused the idea that rights are given to subjects. Under this notion, the state had the power to give rights to citizens, and take them away. Since this was not the aim of HRA 2011, the term "human rights" was preferred. Also the idea of "individual" excluded the existence of collective social rights, which does not occur when "human rights" is used.

Likewise, "fundamental rights" was also deemed inappropriate. The use of this terminology prompted a discussion about the standard of protection under HRA 2011. "Fundamental rights," prior to the amendment, was understood in Mexico only to refer to those human rights included in the Mexican Constitution, and excluding those enshrined in international treaties. This narrow view of "fundamental rights" was explicitly adopted by the Mexican Supreme Court in 2009, when it answered the question of what human rights the Human Rights Commission could defend through the Action of Unconstitutionality.[10] The Court responded that "fundamental rights" included just those in

the Mexican Constitution, given the Mexican Supreme Court's interpretation of the Constitutional Supremacy principle—an interpretation that would be modified—that allowed the Court to affirm those human rights included in the Mexican Constitution but denied it the power to defend human rights only found in international treaties.

Given the deficiencies of the terms "individual rights" and "fundamental rights," the term "human rights" was finally adopted by HRA 2011,[11] as it better enshrined the desired standard of protection than did "individual rights" or "fundamental rights." Using "human rights" overcame the objections inherent in the concept of "individual rights" namely, that these rights are not created by the state, but are simply recognized, which implied the idea of rights inherent to people, not the idea of inherent individual rights. There was also no reference to individuality or collectivity. Furthermore, using the term "human rights" created an open system for human rights protection and improvement of their enjoyment by Mexican citizens, which sometimes would have been obstructed in Mexico by the use of the wording "fundamental rights." "Human rights" refers to constitutional rights, and also allows for the direct enforcement of international legal instruments that may provide more effective mechanisms for the defense of human rights than would the use of "fundamental rights."

"In the Unites States of Mexico, all persons shall enjoy the rights recognized by the Constitution and international treaties to which the Mexican State is party, as well as guarantees for their protection, the exercise of which may not be restricted or suspended, except in cases and under conditions established by this Constitution."

The Heart of the Amendment: Article 1

In addition to a new and improved title, new language in the amendment substantially changed Article 1 of the Mexican Constitution. It now states, "In the Unites States of Mexico, all persons shall enjoy the rights recognized by the Constitution and international treaties to which the Mexican State is party, as well as guarantees for their protection, the exercise of which may not be restricted or suspended, except in cases and under conditions established by this Constitution."[12]

The rephrasing of Article 1 of the Constitution is at the heart of the overall constitutional amendment reforms of 2011, meant to be a systematic change in the conception, recognition, and protection of human rights. The first change was for the owner of rights, altered from "Men"—as the Constitution had referred to it since its creation—to "Person," avoiding, with this alteration, gender reductionisms.[13]

Furthermore, the essential modification in wording from "fundamental rights" to "human rights," and the adoption of the concept of the "person," rather than "man," opened the window for a new interpretation of the rights of persons. The amendment states that "all people will enjoy the human rights recognized in this Constitution and in international treaties to which the State of Mexico is party,"[14] which requires the adoption of international standards of human rights. Given that the original proposal referred only to human rights treaties, this change, made by the House of Representatives on December 15, 2010, is an advantage of the reform because it increases the breadth of the guaranteed rights.[15] Thus, the new Article 1 now accepts the application of customary international law and human rights standards to Mexican laws and allows human rights advocates to use international standards as a tool for asserting human rights violations.

Additionally, the reform established the principle of *pro homine*, which signifies applying the greatest protection for the individual and now states that "rules on human rights shall be interpreted in accordance with the Constitution and international treaties on the subject, at all times *favoring the broadest protections for people*."[16] Prior to the adoption of this principle, courts applied a much more restrictive interpretation of the Constitution, limiting the ability of human rights protection for citizens as in Action of Unconstitutionality 22/2009.[17] By adopting the *pro homine* principle in the legislation, the Mexican Congress created an opportunity for the courts to re-evaluate the standard of review used in courts to create superior protections for human rights. The amendment accomplished this in the second paragraph of Article 1 by explicitly stating the *pro homine* principle, and requiring that all rules must be consistent with the Constitution and international treaties, thus broadening the standard of protection.

The third paragraph of Article 1 established clear obligations for the state to promote, respect, protect, and guarantee the human rights of all citizens. To fulfill these obligations, the state must undertake all measures in accordance with principles of universality, interdependence, indivisibility, and progressiveness. By applying international standards through HRA 2011, courts should interpret the new text to create a state obligation to prevent, investigate, punish, and remedy violations of human rights, a task that involves implementing specific regulatory legislation.[18]

Educational Effect

To ensure the realization of the new human rights protections, the amendment highlighted the importance of implementing an educational[19] program on the reforms, aimed at the entire population.[20] This is now required through the modification of Article 3, which now states, "The education provided by the state tends to harmoniously develop all the faculties of the human being and promote, at once, the love of country, *respect for human rights*, and awareness of international solidarity, independence, and justice."[21]

This educational dimension is important, because as Lynn Hunt, Amartya Sen,[22] and others scholars argue, there are two main dimensions for human rights as instruments for society. First, increased education helps protect people's liberty against

state oppression by increasing knowledge and the ability to make effective legal demands, and furthermore, can help provide inspiration for legislation. Second, education is an instrument for acculturation, meaning that education about human rights is a tool that provokes change in cultural perceptions. This, in turn, helps people develop into engaged citizens who may defend and enforce their rights and demand that the state comply with its obligations.

Inter-American Court of Human Rights

Individual Reforms to Individual Rights

In addition to the broad changes in the language of Article 1 that increase protection for human rights, HRA 2011 also reformed and improved constitutional protections for specific human rights. For example, the Representatives in the second round of constitutional modifications recommended that the last paragraph of Article 1 use the more specific term "sexual preferences," rather than just "preferences," to avoid misunderstanding and increase protection for lesbian, gay, bisexual, and transgendered persons' (LGBT) human rights: "Any discrimination on the grounds of ethnic or national origin, gender, age, disability, social status, health status, religion, opinions, sexual preference, marital, or any other status, that threatens human dignity and is intended to nullify or impair the rights and freedoms of individuals is prohibited."[23]

Not only does this amendment increase protection for LGBT individuals in Mexico, but it also places Mexico among the vanguard in this hotly debated issue.[24] Two years earlier, the Supreme Court declared constitutional a legal amendment in the Federal District of Mexico City that expanded the definition of marriage to same-sex couples and gave them the option to become adoptive parents.[25]

In addition to improved protection for LGBT individuals, HRA 2011 also reformed Article 11 by altering the first paragraph and adding a second paragraph containing further modifications.[26] These reforms addressed refugee and asylum issues and gave specific rights to these groups of people under the concept of the "Person" as the rights holder. [27] These newly created rights for refugees and asylum-seekers adopted by the Constituent Assembly came from a new recognition of the obligations imposed on Mexico through international treaties and declarations, such as the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Convention Related to the Status of Refugees. Thus, the new text of Article 11 established that: "[I]n the case of persecution for political reasons, everyone has the right to seek asylum; for humanitarian reasons they will receive refuge. The law will regulate their origins and exceptions."[28] It is important to note that a secondary law must be adopted by the Mexican legislature to give effect to these rights, but this has not happened yet.

Additionally, Article 15 proposed adherence to future international treaties only to the extent that they comport with human rights standards enshrined in the Mexican Constitution and international treaties previously adopted. This created a level of supremacy for human rights norms over all domestic law. The reformed article states, "The signing of agreements or treaties that alter human right recognized by the Constitution and international treaties to which the Mexican State is party is not authorized."[29]

The HRA 2011 reforms to Article 18 sought to promote and protect human rights standards in the prison system by declaring that "the prison system is organized on the basis of respect for human rights."[30]

Finally, HRA 2011 reformed Article 33 of the Constitution, regarding the deportation process, to recognize certain rights for aliens. The reform curtailed the discretion of the executive branch to order deportation by first requiring a hearing and by establishing a legal framework for this process.[31] The new text now reads: "[F]oreign persons are those who do not possess the qualifications set out in Article 30, and shall enjoy the constitutional rights and guarantees recognized by this Constitution. The Executive of the Union, after a hearing, may expel foreigners from the country based on the law, which will regulate the administrative procedure, as well as the location and duration of the detention."[32]

Through these reforms, the new Mexican Constitution offers a large umbrella of protection for human rights and creates new, effective tools for human rights defenders and advocates.

Human Rights 'Suspension Clause'

Under the new amendments, a key human rights protection was the modification of Article 29 that created a class of non-derogable rights. The modification of Article 29 proposed new rules about the human rights suspension clause; it granted Congress and the Standing Committee[33] the authority to approve the suspension of certain rights. Under Article 29 as amended, the President must make the request in coordination with the Secretary of State and the Attorney General's office; it must be limited in time and not directed against a particular person. Furthermore, it is compulsory that the Supreme Court review the constitutionality of the decrees issued by the Executive during the suspension. This review requirement is a fundamental guarantee within the suspension clause because, in addition to the review requirement, there is an explicit set of non-derogable rights that are not subject to suspension.[34]

Like the non-derogable rights laid out in the American Convention on Human Rights, Article 29 of the Mexican Constitution states as non-derogable the rights of non-discrimination, recognition as a person before the law, life, personal integrity, protection of the family, name, nationality, childhood, political rights, freedom of thought, conscience and religion, *ex post facto* laws, prohibition of capital punishment, prohibition of slavery and servitude, prohibition of forced disappearance, and torture. Furthermore, Article 29 creates judicial guarantees essential for the protection of these rights. It is noteworthy that although the list includes the right to freedom of thought, it does not include the right to freedom of expression.[35] This exclusion is important given the democratic nature of Mexico, taking into account that democracies are set up with the participation of the people who need to be free to express themselves, especially in emergency-type situations.

The (Uncomfortable) Authority to Investigate

The Authority to Investigate, which grants authorization for a judicial investigation of serious human rights violations, has been at the center of a number of cases within the Mexican Supreme Court because of its contentious nature.[36] The highly negative societal response to the Court's decisions in the *Lydia Cacho*[37] and *ABC*[38] cases is illustrative of the uncomfortable nature of this authority. Both cases generated negative reactions to the decisions of the Court; due to this, the Court requested the removal of this authority because then it would not have had to deal with these cases.

In an attempt to deal with these concerns, the constitutional reform amended Articles 97 and 102.[39] The power of the legislature to initiate an investigation, previously located in Article 97, is now located in Article 102, which governs the National Commission of Human Rights.[40] The new Article 102 provides that an investigation may be started *proprio motu* by exhortation by the Federal Executive, a Chamber of Congress, a governor, or a state legislature.[41] Throughout the debate process, the Senate articulated its reasons for the reforms, stating that "with the development and full implementation of a public body with the characteristics of the National Commission of Human Rights, this attribution has no reason to exist within the Supreme Court's set of powers."[42] Through a dissemination of the power to initiate investigations, these modifications attempt to increase pressure on the Court to not shy away from human rights issues, and also create more mechanisms for human rights defenders to access the courts.

Non-Judicial System

Because Mexico is a federation, there are Human Rights Commissions both at the federal and state level. The new constitutional text articulates a need for what the bill referred to as a strengthening of the non-judicial system for the protection of human rights. The new articles require that the recommendations of the Human Rights Commissions may only be derogated from if there are reasonable grounds to do so and if the action is public. Furthermore, only the Senate, Standing Committee, or state legislatures may classify the derogation as legal but not in compliance with the Human Rights Commissions.[43] This ensures that the majority of state and federal officials must comply, in all actions that fall within their official capacity, with the recommendations of the Human Rights Commissions.

The reform also introduces an interesting and beneficial idea regarding the work of the State Human Rights Commissions. The reforms grant State Commissions autonomy from state legislatures, which better enables the State Commissions to protect human rights. Finally, the new amendments establish that the appointment of the president of both the National Commission and the State Commissions shall comply with a transparent process through public consultation, ensuring the autonomy of the organizations and creating public accountability.[44] This new rule will help alleviate concerns of corruption and coercion.

A New Model of Jurisdictional Defense: Debate in the Supreme Court

As has been explained, prior to the amendments, the Mexican Supreme Court[45] only recognized those rights written into the Constitution. The amendment now explicitly states that the Constitution recognizes the human rights enshrined in international treaties and standards and creates an unprecedented window of opportunity for the courts to expand rights, but it also leaves the courts with new questions to solve. The imposition of international standards on national mechanisms, specifically standards for the recognition and defense of individual human rights, prompted a series of questions about the relationship between national institutions and international requirements.

A primary question centered on the relationship and interaction between international jurisdictions, represented primarily by the Inter-American Court of Human Rights (IACtHR), and the national judiciary. The specific concern regarded the "diffuse control [46] of conventionality[47] *ex officio*"[48]—that is, how human rights in international treaties will be defended in Mexican courts, and how they will react.

The question of diffuse control was discussed at the Plenary of the Mexican Supreme Court on July 7, 2011, in the context of the *Radilla-Pacheco v. Mexico* case,[49] a condemnatory sentence to Mexico from the IACtHR. For the Mexican Supreme Court, the fundamental issue in this case was the extent of the control of conventionality *ex officio,* specifically paragraph 339 of the judgment of the IACtHR, which states:

> With regard to judicial practices, this Tribunal has established, in its jurisprudence, that it is aware that the domestic judges and tribunals are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system. But once a State has ratified an international treaty such as the American Convention, its judges, as part of the State's apparatus, are also submitted to it, which compels them to make sure that the provisions of the Convention are not affected by the application of laws contrary to its object and purpose, and that they do not lack legal effects from their creation. *In other words, the Judiciary shall exercise a "control of conventionality"* ex officio *between domestic regulations and the American Convention*, evidently within the framework of its respective competences and the corresponding procedural regulations. Within this task, the Judiciary

> shall take into consideration not only the treaty but also the interpretation the Inter-American Court, final interpreter of the American Convention, has made of it.[50]

In other words, the IACtHR stated three things. First, *diffuse* control applies to *all* Mexican judges, regardless of jurisdiction (federal or state). Second, they must apply *control of conventionality*, which means that every judge, in any case at bar, is obliged to defend human rights found not only in the Mexican Constitution but also in international treaties. Third, the judge may, at will, analyze and decide a human rights violation, in any case under his or her study (*ex officio*). That is the meaning of *diffuse* control of conventionality *ex officio*.

The most important part of this interpretation lies in the implication of the *diffuse*[51] dimension in the new amendments: All judges—federal and state—must abide by the Mexican Constitution, and also with international human rights law. Through this new power given to state judges, who were historically forbidden to interpret the Constitution or apply international law by the Supreme Court's constitutional interpretation, the changes mandated by HRA 2011 and IACtHR decisions, such as *Radilla-Pacheco*, will be better implemented and will have greater effect. Not only will more judges be following international human rights standards, but federal judges will have a harder time shirking their responsibility as state judges put pressure on them to comply.

The *Radilla-Pacheco* Case and the Adoption of Diffuse Control of Constitutionality and Conventionality

After the decision of the IACtHR in *Radilla-Pacheco*, the Mexican judiciary engaged in a debate about the weight that should be given to judgments of the IACtHR and the role of national judges in deviating from the IACtHR standard of review for claims based on human rights violations. These discussions were spear-headed by Justice Guillermo Ortiz Mayagoitia, who was then President of the Supreme Court.

The IACtHR urged the adoption of diffuse conventionality control, which would effectively give all judges—federal and state—the power to declare laws or acts unconstitutional and/or incompatible with the American Convention on Human Rights. At the same time, however, the HRA 2011 amendments made a provision that required the adoption of international standards of human rights, leaving judges with less autonomy and therefore leading to a possible class of standards. The issues to be decided, therefore, were: What should be the implication in the adoption of conventionality control? To what extent should the control be diffuse, meaning, should all judges be able to decide whether a law or act complied with the Convention? And, did diffuse control of conventionality also mean diffuse control of constitutionality? In other words, by giving all judges the authority to interpret and apply the American Convention on Human Rights, would they also have the authority to interpret the Mexican Constitution and declare certain acts unconstitutional as well as contrary to the object and purpose of the Convention? Answering this last question in the positive would have meant changing the traditional structure of Mexican juridical powers.

In its July 21, 2011, session, the Supreme Court resolved these questions by establishing a model of constitutional control and human rights defense that included *all* courts.[52] It united the new Article 1 with Article 133, as well as with the arguments of the Inter-American Court in paragraph 339 of the *Radilla-Pacheco* decision, thus adopting both constitutionality and conventionality control for all judges in the country—in essence creating a system of review much like the system in the United States. All judges, at all levels, have the ability to declare an act or law unconstitutional and/or not in accordance with the American Convention, rather than limiting this power only to the Supreme Court.

This new and revolutionary model was only possible because of the influence of HRA 2011, which sought to incorporate increased protection of human rights within the Mexican Courts. It is important to note that while some action may still only be deemed unconstitutional by the federal judiciary under a theory of "concentrated control," this applies only to constitutional controversies. Secondly, the "diffuse control" by no means implies that all judges and courts may make general declaration of unconstitutionality. Diffuse control simply means that judges may sever the law that the judge considers unconstitutional in the case he or she is currently deciding.

The exercise of this diffuse control comes from two sources and types of authority: first, from the electoral court, through the sixth paragraph of Article 99 of the Constitution and, second, from the rest of the country's courts by way of Article 133. This is the most important change created by the interpretation because for decades local judges were forbidden to review the constitutionality of acts and law, a power previously only granted to federal judges. Therefore, HRA 2011 dramatically expanded the overall number of judges with the authority to interpret the Constitution and to protect human rights in the Constitution and in the international treaties. Finally, the *pro homine* principle gives these same courts the power to determine the threshold to protect persons under the law.

The two last points are revolutionary concepts in Mexico because for years it was maintained that the limited number of judges with constitutionality control excluded the possibility of

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diffuse control to all judicial authorities, leaving this power solely in the hands of the federal judiciary. The reform gives the opportunity to open Mexican courts to international standards, and the adoption of the *pro homine* principle facilitates the change in mind-set for the Court to pave the way to increasing the number of judges and courts that are debating, discussing and resolving complex issues of law, independent of the federal political process.

Conclusion

The year 2011 was a revolutionary one for Mexico. The June 10, 2011, constitutional amendment is creating a new atmosphere for the protection of human rights through the adoption of international standards of human rights, the *pro homine* principle, a new process for using the human rights suspension clause, and a group of rights that cannot be suspended. Furthermore, the adoption of new international treaties, a reformed deportation process, and the differential use of the criminal system help increase and positively influence a structure more respectful to human rights. The positive impacts on the Mexican legal system are notable as well. The amendment requires the observance of *amparo*, which protects the procedural guarantees of human rights through the constitutional control of human rights based on international treaties. This change endowed all Mexican judges—both federal and state—with the power to apply international standards in human rights cases for the first time.

Endnotes

[1] Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended,* Diario Oficial de la Federación [DO], 30 de noviembre de 2012. The Mexican Constitution has 136 articles organized in nine titles, with chapters inside them. It was enacted on February 5, 1917, at the end of Mexican Revolution. Its official name is the "Political Constitution of the United States of Mexico, which amends that of February 5, 1857" ("Constitución Política de los Estados Unidos Mexicanos, que reforma la del 5 de febrero de 1857").

[2] In accordance with Article 135, the process to amend the Mexican Constitution requires two-thirds of the votes of the congressional members in attendance at the respective session. Such amendments and reforms shall be valid when ratified by the majority of the state legislatures. The National Congress is the only body that can propose modifications to a bill; state legislatures are only allowed to vote in the affirmative or the negative. For the entire amendment process, see http://www.diputados.gob.mx/LeyesBiblio/proceso/lxi/117_DOF_10jun11.pdf.

[3] "De los Derechos Humanos y sus garantías." Here and throughout, this article will note the original Spanish when referring to issues where the exact wording was contentious.

[4] The suspension clause creates a special procedure by which some rights can be suspended in, for example, the case of invasion, serious disturbance of the public peace, or any other situation that puts society in danger or conflict.

[5] "Profesar creencia religiosa alguna."

[6] Ley para la Reforma del Estado [SRL] [State Reform Legislation], Diario Oficial de la Federación [DO], 13 de abril de 2007.

[7] Reforma Constitucional de Seguridad y Justicia [Constitutional Reform on Security and Justice], Diario Oficial de la Federación [DO], 18 de junio de 2008.

[8] Reforma Constitucional en Materia de Amparo [Constitutional Reform on the Subject of *Amparo*], Diario Oficial de la Federación [DO], 6 de junio de 2011.

[9] The writ of *amparo* is a constitutional procedure contemplated in Articles 103 and 107 of the Mexican Constitution. Article 103 says that this procedure is to protect against "general rules, acts or omissions of the authorities that violate human rights and guarantees recognized for their protection granted by this Constitution and by international treaties to which the Mexican State is party." Article 107 establishes the threshold for the procedure; it then is developed in a secondary law called the "*Amparo* Law."

[10] Acción de Inconstitucionalidad 22/2009. Derecho a la Tutela Judicial Efectiva [Right to an Effective Remedy], Pleno de la Suprema Corte de Justicia [SCJN] [Supreme Court], Semanario Judicial de la Federación y su Gaceta, 4 de marzo de 2010, *available at* http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=105663.

[11] Diario de los Debates de la Cámara de Diputados [DDCD], 23 de abril de 2009, at 360 [hereinafter DDCD].

[12] C.P., art. 1, para. 1. "En los Estados Unidos Mexicanos todas las personas gozarán de los derechos humanos reconocidos en esta Constitución y en los tratados internacionales de los que el Estado Mexicano sea parte, así como de las garantías para su protección, cuyo ejercicio no podrá restringirse ni suspenderse, salvo en los casos y bajo las condiciones que esta Constitución establece."

[13] DDCD, *supra* note 11, at 68.

[14] "todas las personas gozarán de los derechos humanos reconocidos en esta Constitución y en los tratados internacionales de los que el Estado Mexicano sea parte."

[15] Víctor M. Martínez Bullé-Goyri, *Reforma Constitucional en Materia de Derechos Humanos*, 130 Boletín Mexicano de Derecho Comparado [BMDC] 406, 411 (2011).

[16] Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended,* art. 1, para. 2, Diario Oficial de la Federación [DO], 30 de noviembre de 2012. "Las normas relativas a los derechos humanos se interpretarán de conformidad con esta Constitución y con los tratados internacionales de la materia favoreciendo en todo momento a las personas *la protección más amplia.*"

[17] Case heard by the Mexican Supreme Court on March 4, 2010, analyzing which human rights could be protected by the National Human Rights Commission. The Commission decided that only those rights recognized in the Mexican Constitution could be protected.

[18] According to the amendment's second transitory article, this law, providing redress, shall be issued one year after the decree enters into force.

[19] Instituto de Investigaciones Jurídicas UNAM, Encuesta Nacional de Cultura Constitucional (2011), *available at* http://www.juridicas.unam.mx/invest/areas/opinion/doc/EncuestaConstitucion.pdf.

[20] *See* U.N. Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers: Addendum Mission to Mexico*, ¶ 22, U.N. Doc. A/HRC/17/30/Add.3 (April 18, 2011).

[21] C.P., art. 3, para. 2. "La educación que imparta el Estado tenderá a desarrollar armónicamente, todas las facultades del ser humano y fomentará en él, a la vez, el amor a la Patria, *el respeto a los derechos humanos* y la conciencia de la solidaridad internacional, en la independencia y en la justicia."

[22] *See generally* Lynn Hunt, La Invención de los Derechos Humanos (2009); Amartya Sen, The Idea of Justice (2009).

[23] C.P., art. 1, para. 5. "Queda prohibida toda discriminación motivada por origen étnico o nacional, el género, la edad, las discapacidades, la condición social, las condiciones de salud, la religión, las opiniones, las preferencias sexuales, el estado civil o

cualquier otra que atente contra la dignidad humana y tenga por objeto anular o menoscabar los derechos y libertades de las personas."

[24] Acción de Inconstitucionalidad 2/2010, Pleno de la Suprema Corte de Justicia [SCJN] [Supreme Court], *available at* http://www2.scjn.gob.mx/red2/expedientes/ [hereinafter Same-Sex Marriage Case, 2/2010]. *See generally* Alejandro Madrazo & Estefanía Vela, *The Mexican Supreme Court's (Sexual) Revolution?*, 89 Tex. L. Rev. 1863, 1878–80 (2011) (explaining the Court's decision).

[25] *See* Same-Sex Marriage Case, 2/2010.

[26] Modifications were made during the second round of the HRA 2011 amendment process. *See supra* note 1, and accompanying text.

[27] This issue has been highlighted as a focus that must be addressed in the Mexican context. *See* Human Rights Watch, World Report 2011: Events of 2010 260 (2011); U.S. Dep't of State, Trafficking in Persons Report 249 (2012).

[28] C.P., art. 11, para. 2. "En caso de persecución, por motivos de orden político, toda persona tiene derecho a solicitar asilo; por causas de carácter humanitario se recibirá refugio. La ley regulará sus procedencias y excepciones."

[29] C.P., art. 15. "No se autoriza la celebración . . . de convenios o tratados en virtud de los que se alteren los derechos humanos reconocidos por esta Constitución y en los tratados internacionales de los que el Estado Mexicano sea parte."

[30] C.P., art. 18, para. 2. "El sistema penitenciario se organizará sobre la base del respeto a los derechos humanos."

[31] According to the reform amendment's fifth transitory article, this law, providing the legal framework for deportation, shall be issued one year after the decree enters into force.

[32] C.P., art. 33. "Son personas extranjeras las que no posean las calidades determinadas en el artículo 30 constitucional y que gozarán de los derechos humanos y garantías que reconoce esta Constitución. El Ejecutivo de la Unión, previa audiencia, podrá expulsar del territorio nacional a personas extranjeras con fundamento en la ley, la cual regulará el procedimiento administrativo, así como el lugar y tiempo que dure la detención."

[33] The Standing Committee is the congressional committee that remains active when Congress is in recess.

[34] According to the reform amendment's fourth transitory article, this law, providing regulation to the suspension clause, shall be issued one year after the decree enters into force.

[35] This is of particular interest if we include studies on the reality of freedom of expression in Mexico. *See* U.N. Human Rights Council, *Informe del Relator Especial Sobre la Promoción y Protección del Derecho a la Libertad de Opinión y de Expresión: Adición Misión a México* [Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Addendum Mission to Mexico], ¶ 18, U.N. Doc. A/HRC/17/27/Add.3 (May 19, 2011); *see also* Konrad Adenauer Stiftung & Poliat, Índice de Desarrollo Democrático de América Latina 112–13 (2011).

[36] According to the previous Article 97, the "Investigative Authority" authorized the Supreme Court to investigate serious violations of human rights, but the meaning of this authority was always a matter of controversy.

[37] Facultad de Investigación [Investigative Authority] 2/2006, Pleno de la Suprema Corte de Justicia [SCJN] [Supreme Court], *available at* http://200.38.163.175:50470/juridica/engroses/publico/06000020.123.pdf. In this case the Mexican Supreme Court analyzed if the detention of journalist Lydia Cacho from 2005 to 2007, after she wrote the book "The Evils of Eden," constituted serious violations of human rights. The Court decided that no rights were violated. *See* Aída Castro, Cronología: Caso Lydia Cacho (2008).

[38] Facultad de Investigación 1/2009, SCJN, *available at* http://www2.scjn.gob.mx/fi1-2009/Documentos/Informes/FacultadDeInvestigacion-1-2009V1.pdf. On June 5, 2009, there was a fire in a day care center named "Guardería ABC, Sociedad Civil" where children died. The day care center was administered by the Mexican State; therefore, the Supreme Court analyzed if the state could be found liable. The Court determined that there were human rights violations, but failed to specify who bore responsibility.

[39] The former Article 97, which pertained to the Supreme Court but because of the amendment was relocated to Article 102, which pertains to the National Commission of Human Rights, gives authority "to check some fact or facts which constitute a grave violation of any individual guarantee."

[40] *See* Jorge Carpizo, *¿Es Acertada la Probable Transferencia de la Función de Investigación de la Suprema Corte a la Comisión Nacional de los Derechos Humanos?*, *in* La Reforma Constitucional de Derechos Humanos: Un Nuevo Paradigma 313, 331–32 (Miguel Carbonell & Pedro Salazar eds., 2011) (relating concerns about the change).

[41] *Gaceta del Senado* (Legislatura LXI, Año I, Segundo Periodo Ordinario, jueves 8 de abril del 2010, no. 114) at 182.

[42] *Id.*

[43] These Commissions also play an important role in the Inter-American System, Luis González Placencia & Julieta Morales Sánchez, *El papel de los organismos no jurisdiccionales de protección a los derechos humanos en el Sistema Interamericano de Protección a los Derechos Humanos*, Revista Iberoamericana de Derecho Procesal Constitucional, 2011, at 81.

[44] According to the amendment's seventh transitory article, this framework law shall be issued one year after the decree enters into force.

[45] The Mexican Supreme Court is composed of eleven justices (called ministers) and works in two ways. First, in chambers, the justices deliberate in two groups of five; the President does not participate. Second, in plenary, the President takes part in the deliberation with the ten other justices. Only issues of importance and significance to the entire constitutional system reach the plenary. *See Estructura Orgánica* [Organizational Structure], Suprema Corte de Justicia de la Nación [Supreme Court] (Dec. 2012), http://www.scjn.gob.mx/transparencia/Paginas/trans_int_org.aspx.Inicio.aspx.

[46] "Diffuse control" refers to the fact that any federal or state judge may analyze laws according to the Constitution (control of constitutionality) or treaties (control of conventionality).

[47] Conventionality refers to whether an act or law in Mexico is in accordance with a convention or treaty.

[48] A judge is now able to analyze human rights violations without taking into account if the right is established in the Mexican Constitution or any international treaty, and without a request from any party in the procedure to do so.

[49] Preliminary Exceptions, Background, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 777/01 (Nov. 23, 2009) (condemning Mexico for violations of the rights to life, due process, and freedom of expression, as well as the right to be free from enforced disappearance).

[50] *Id*., ¶ 339 (emphasis added).

[51] *See supra* note 46.

[52] Previously, the Constitution did not authorize diffuse control of constitutionality. *See* Control Difuso de la Constitucionalidad de Normas Generales. No lo Autoriza el Artículo 133 de la Constitución. 2.- Control Judicial de la Constitución. Es Atribución Exclusiva del Poder Judicial de la Federación. Semanario Judicial de la Federación y su Gaceta, agosto del 1999, tesis P./J. 74/99, Página 5.